Chairperson: **Tatsushi Nishioka**,
Director of Hague Convention Division, Foreign Policy Bureau,
Ministry of Foreign Affairs

Tatsushi Nishioka
Thank you for waiting. Symposium on the Hague Convention in considering the modality of International Family Mediation will start. I have the honor to serve as the moderator this afternoon. From the Hague Convention Office of the Foreign Policy Bureau of MOFA, I am Nishioka. Thank you very much.

You should find the receiver for the simultaneous translation. Channel one is Japanese. Channel two is English. During this program please kindly switch off your mobile devices.

Information about asking questions, in the second part of the panel discussion, after the discussion there will be time for questions and answers. Should you wish to ask questions, please use the paper to write your questions. Please kindly state your name at the top of the paper. Below your name there is a place to write your question. It could be written either in English or Japanese. The question paper will be collected before 3 p.m. Please hand in before 3 p.m.

During the panel discussion there is no break. Therefore, if possible, please hand in during the break after session one. Please place your paper in the box or there are stars with boxes, please file your question. First of all, on behalf of the organizer and representing the Ministry of Foreign Affairs may I invite our Senior Vice Minister Mr. Syunichi Suzuki to welcome all of you. Senior Vice Minister Suzuki, please.

Opening Remarks (13:00-)

Syunichi Suzuki
Parliamentary Senior Vice‐Minister for Foreign Affairs,
Ministry of Foreign Affairs

Syunichi Suzuki
Ladies and gentlemen, I would like to send my gratitude to you for attending the public symposium on the Hague Convention today. This symposium is being organized by the Ministry of Foreign Affairs with the cooperation of the Japan Association of Arbitrators and with the sponsorship of the Japan Federation of Bar Associations. I would like to provide my deep felt gratitude to all the parties who have rendered cooperation to the planning and management of today's symposium and all speakers, moderators, and panelists.

Over the recent years along with the progress of globalization, human movement and international marriages of Japanese nationals are on the rise and along with this we have a larger number of divorces. As a result, child abduction is drawing attention as a serious international problem; children of divorced couples are abducted overseas by one parent without the consent of the other. .

While the Hague Convention is a set of international rules responding to international child abduction and has been contracted by 89 countries including many major countries, Japan has not yet become a contracting party. As wrongful international child abduction is becoming a more grave problem for Japan as well, Japan's conclusion of the Hague Convention will

establish the rules to resolve the problem in a way which attaches priority to the child's interest and it is also necessary to prevent the occurrence of new problems. The conclusion of the Hague Convention is an urgent agenda for Japan, so the Government of Japan intends to continue to aim at an early conclusion of the Hague Convention.

In today's symposium we would like to hold discussions on the topic of International Family Mediation and its Modality. This is because, for the Ministry of Foreign Affairs, which will serve as the Central Authority in the convention, it is necessary to build a platform in this area. The Hague Convention provides voluntary return of the child as well as amicable resolution of the issue as roles of the Central Authority, which are equally important to the trial procedures for the return of child. .

In the international marriages there are cultural and language barriers. If the couple is divorced the two parents will be living in separate countries and go through procedures under different legal systems in many cases. Therefore, there would be more difficulties in the resolution of problems between such parents compared to the domestic situation. Therefore, while the return of the child through court trial is one of the options, the methodology of mediation, that is, searching for a resolution by voluntary discussions by the parties, is also expected to play a significant role.

Naturally, we should respect the objective of the Hague Convention to return the child as quickly as possible to the country of habitual residence but at the same time mediation, which is a way to arrive at an amicable resolution without going through court trial, will promote the voluntary reconciliation of the parties, and can become an effective method to avoid complexities of subsequent problems. Therefore, it will be highly meaningful to secure the option of mediation in Japan.

On the other hand, we have not yet fully developed an institutional mechanism for international family mediation in Japan. We have little accumulation of wisdom and capacity in this area. Those mediators dealing with international child abduction will have to overcome many difficulties such as differences in cultural backgrounds, languages and legal systems and also long distances between the countries and to try to lead the parties to an agreement. Therefore mediators must be equipped with sophisticated expertise and capabilities.

In today's symposium we have invited experts who have rich wisdom and experience as mediators in Hague Convention cases in the contracting parties. We also have domestic and international practitioners and academics who have been deeply involved in international child abduction cases. I do hope that participants would be able to learn the practice of mediation under the Hague Convention as well as its importance from the experts who have rich experience and wisdom. For the Foreign Ministry as well, I am convinced that this will be a valuable opportunity to gain knowledge on international family mediation in order to deal with child abduction.

I would find it fortunate if you would be able to engage in today’s discussions on the family mediation in Hague Convention cases with the above-mentioned issues in mind. For those who have practiced mediation so far, I do sincerely hope that you will work towards the development of the system which supports the process which would lead to resolution of Hague Convention cases.

I do sincerely hope that today's symposium will provide a meaningful opportunity for developing knowledge and networking amongst those concerned, through discussions based on various experiences on voluntary return and amicable resolution of the issues. Thank you very much for your kind attention.

Tatsushi Nishioka
Thank you very much. On behalf of the organizer, the Ministry of Foreign Affairs, this was Mr. Syunichi Suzuki, our senior vice minister. The next part of the program will be the keynote speeches. The stage will be prepared, so please kindly wait for a few moments.

There are two keynote speakers. Our first speaker is the Chair of the Board of Trustees of Reunite, solicitor Anne‐Marie Hutchinson. Chair Anne‐Marie Hutchinson is an expert of family laws of international area and dispute of countries and expert of movement of children, international divorce fora, dispute of international custodies and cross-border child abduction. Solicitor Anne‐Marie Hutchinson the floor is yours.

Keynote Speech (13:10-)

"Cross‐border Child Custody Disputes and the Ideal Modality of the Hague Convention and the Mediation"

Anne‐Marie Hutchinson
Solicitor and Partner at Dawson Cornwell, Chair of the Board of Trustees of reunite, United kingdom

Anne‐Marie Hutchinson
Good afternoon. Ambassador, Minister, esteemed colleagues, ladies and gentlemen, can I first say that it's a great honor for me to have been invited to address this very important symposium and it is also a very great honor for me to visit your beautiful country for the first time.

You may be pleased to know that I will not be speaking to the papers in your packs, but I will be highlighting some issues in relation to them. What we are looking at today is the issue of child abduction but not only child abduction, we are looking at the legal, social, emotional, psychological issues that arise when there is a family breakdown which involves international travel and the inter-country exchange of children.

Those consequences affect not only the immediate family involved, the mother, the father, the grandparents, the aunts, the uncles, the extended family, they affect our society because when a situation such as that arises there are consequences of emotional harm potentially to the children, to a left behind parent and thus to society as a whole. There are wider socio-issues. The Hague conference and the child based international conventions came about because society has recognized that in our implementation of the UN convention on the rights of the child we have a wider duty than simply leaving these to be dealt with as private family matters.

These are matters of private international law and society must respond in a responsible and obligatory way, and lawyers have a duty. We have a duty to apply the rule of law to these situations which can, as all lawyers here who have conducted these cases know, in themselves, although they arise out of what may appear initially to be a domestic dispute or a relationship breakdown raise complex issues of private international law. These are the cases that will find their way to the Supreme Courts of our jurisdictions, to the European Court of Human Rights because they raise complex issues of private international law, jurisdictional law, state sovereignty and wider implications of the UN convention and interstate obligations. That is why we are here and that is why, as I say, I am very honored to have been invited.

What I want to do very briefly is to give you an outline of what happens in the UK in such cases. The UK has been a signatory and an implementer of this particular convention now since 1987. We have the benefit of a long period of law precedent and practice. We have the

experience of coming from a situation where Japan is now, where the issue of these types of cases was not that well known within the wider public. Unless it was somebody who you knew this situation had occurred to, it wasn't an issue that touched upon you.

There was a long period of education that we required in England. When our Act was made we had a significant period of coming to terms with it, of coming to terms with applying to a family situation the principles of private international law. Again, for practitioners here, that was very much an alien concept to us, especially to family lawyers because in most jurisdictions, indeed in all jurisdiction, in family disputes where there are children the first principle is the best interest of the child. It was very difficult to come to terms with aligning the principles of the Hague Convention which is based on policy with what was perceived to be the best interest of the child in domestic family law. It took a period of time and a number of cases including cases that were referred to the European Court of Human Rights, for there to be not only an acceptance but an understanding that the two issues are not separate and that they do very much coincide.

For example, a case involving Romania was sent to the European Court of Human Rights involving the Hague Convention and the implementation of the convention in Romania. The European Court of Human Rights said that it is never in the best interest of a child to be abducted or removed from their home state, from their country of habitual residence in circumstances which they may not understand, in circumstances they do not have control over and in circumstances where they are in the middle of a parental dispute that has diplomatic and jurisdictional issues surrounding it. It also confirmed that the concept of returning children to the state of their habitual residence, to the starting point to where they were before the event occurred is and usually is in the best interest of a child.

In the United Kingdom we have three jurisdictions that implement the Hague Convention. We have England and Wales, then we have separately Scotland and then we have Northern Ireland. If a child is taken to Glasgow that would be dealt with under the Scottish implementing law. It's very similar to the English law but it's a different Central Authority and it's a different process. Equally if a child was taken to Belfast the implementing law of Northern Ireland applies. In England, all of our cases are dealt within our High Court. We have a *F*amily *C*ourt to deal with domestic family disputes, whether that's divorce, custody or other issues. We have a High Court and all of our Hague cases have to be dealt with at that level. The reason for that, and the policy reason behind that was it was recognized that because international obligations and international conventions demand a very clear understanding by the judges hearing those cases in implementing the convention it was necessary that you had a concentration of expertise in judges. In the UK there are only 19 judges who can hear these cases. In other jurisdictions it's dealt with differently, but the English experience was that we found that it was much better to concentrate the expertise within limited amount of judges so that parents and other people coming before a court knew that they did not have to go through an education hurdle with the judge before moving on with the case.

As a general rule and I say a general rule in the UK, our cases are to be dealt with, within 6 weeks. I say that's a general rule because that's the average. Most cases tend to take 10 to maybe 14 weeks from start to finish. Even then all of you practitioners here will say that it is not possible for a family dispute to be dealt with so quickly. We all said that when the convention commenced in England that it is not possible to have such a speedy conclusion. However it can be done and one of the reasons it's possible is because we implement the convention through a specific statute, the Child Abduction and Custody Act 1985. Then, we have special rules of court to implement the statute. Our rules of court set out basic procedures about when you file, how you file the nature of evidence and time limits, for example. They also deal with how you must concentrate the issues in a case and they assist to

identify what issues are relevant to a Hague Convention case and what issues are not. We remind ourselves that these are not custody hearings.

As to practitioners, and we do have somebody from the UK Central Authority here, Victoria Damnell, who I am sure would speak with you over the coffee break about how our Central Authority operates. In the UK, we have a panel of specialist lawyers who conduct these cases. Now, it doesn't have to be those lawyers who conduct the case but if, for example, a child is brought to the UK, from the US. The left behind parent will contact the US Central Authority, who will contact the UK Central Authority and once it has been established that the criteria for a Hague case has been established it will be passed to an expert lawyer to issue the proceedings for the return of the child to the US.

As to funding for such cases, if you are a parent and your child is taken to the UK, the first question will be how on earth am I going to pay to bring proceedings in England for the return of my child, to find my child, to locate my child, how am I going to pay for that? In the UK, cases are provided for by government legal aid. We have a legal aid system and a left behind parent, a pursuing parent is entitled to public funding to instruct one of the specialist lawyers to bring their proceedings. Their legal fees will be paid. It matters not what the financial position is of the left behind parent. You could have a millionaire whose child has been taken to England and that millionaire, if he or she wishes to, can obtain legal aid to pay their legal fees. The cost of legal aid however will cover legal fees but they will not cover, for example, the cost of the air flight to take the child back home. Those will not be covered by our government. They will not cover the cost of the left behind parent flying into the UK, for example.

Just quickly looking at the procedure because it's relevant to the issue of mediation in such cases. What generally happens in the UK is that a case will start on a without notice basis. A child is brought into the UK, the Central Authority ensures a lawyer is instructed and the case will be started before the court, without the parent who has taken the child, being made aware that a legal process is starting. The lawyer will present the papers to the court and ask the judge for a number of orders. The object of those orders is to maintain the status quo.

The reasoning behind that is so that, for example, if you have a highly motivated parent who is a flight risk, who is perhaps moving around Europe between different countries you do not wish to let them know that a Hague process is starting; otherwise they may just disappear again they may hide the children, or move address. It would be started on an ex parte basis and without notice and orders will be obtained. The first thing that will happen is the child's passport and the taking parent's passport will be taken away and held for safekeeping by the court. The parent who abducted the child will be ordered that they must stay at a known address in the UK. In about 7 days that parent must come before the court and explain to the court whether or not they intend to defend the proceedings and if they do, what they are going to say in their defense. They must set out what their defense is under the Convention and identify their defence with reference to the Convention articles.

Then, the matter moves forward ultimately to a final hearing. The next stage which is what's called the inter-parties or the second hearing stage, and this is where the issue of mediation will be raised and when the issue of mediation will be explored. I will come back to that shortly. The final hearing normally happens within a minimum 6 weeks to 12 weeks and a final order is made. Normally in the UK, in cases especially where the person who has removed the child is a primary carer parent, our judges and our jurisprudence prefers that the person who took the child takes the child back because that's better for the child generally. It's less traumatic for the children and it means that you are returning the whole family to a form of modality in a uniformed way and then the matter of custody can be dealt with in the requesting state.

We do not have as some European states have a system of merely making an order that the child must be returned. We generally believe that it is not usually in the best interest of the child to be separated from the primary carer for the purpose of return. Further, the child doesn't have autonomy to return itself. The court has a duty, a duty to set out how is that child to be returned. How in practical terms, but also in emotional terms, how is this particular child to be returned. Not children in general, this particular child. Does this particular child have any special needs, are there any particular provisions that have to be made for this child in order to return this child to its home State and do those particular needs include the need for this child to return with its abducting parent, even if, that abducting parent had technically, perhaps more than technically committed an offence in removing the child and even if that person abducted the child acted in a reprehensible way. The focus is on what is the best for the child within the parameters of a Hague return and how can we best return this child within the spirit of the convention but in a way that doesn't damage the child further than the initial abduction.

What I want to look at quickly and in your packs you will have my paper which goes through the main concepts behind Hague cases. It sets out the main and key concepts which hopefully you will know and UK and international case law, on habitual residence, on the concept of what is consent, what is acquiescence, on what is settlement.

The two areas which cause practitioners, parents, social workers and court welfare officers the most concern, are the defenses which is Article 13(b) and Article 13(grave risk/intolerable situation and child's objections).

Article 13b we remind ourselves says that a court "is not bound to order the return" if the person who opposes the return establishes that there is a grave risk that a return of the child will expose the child to physical, psychological harm or otherwise place the child in an intolerable situation. As you can imagine in every signatory state, the majority of the case law revolves around that particular article.

There are different approaches to that article but I think the starting point for any state when joining the Hague Convention or looking at the Hague Convention is to go back to the initial Perez-Vera report which was the international report that commended the convention and set out the reasoning behind the convention and the reasoning behind each article.

We might remind ourselves that Article 13b was not put in the convention as some sort of hurdle for the pursuing parent to get over. It was put in there as a UN based child protect provision. That is why it's there. It's not there to trip abducting parents up, it's there to provide the receiving state with a discretion not to return if there is a grave risk of harm and where there are no means of alleviating that harm by putting arrangements into place for the child's return so that a child can be returned without the harm happening. The test for a "grave risk" is a stringent test. There must be a grave risk of grave future harm, if the child is returned. Mere discomfort or difficulty is not enough to meet the high standard that the opposing parent must meet in order to establish the defence.

In your papers where you might want to make a note, on Page 20 there is a heading and it's called Undertakings. Now, I just wanted to mention something about undertakings because they are something that are misunderstood in a lot of jurisdictions. I know that different countries have different approaches to them. Certainly the UK, Ireland, Australia, Canada, New Zealand we have the same approach. Some states in the USA do and some don't.

The idea of and the concept behind undertakings turns largely on the defence that a return will place a child in an "intolerable situation". We remind ourselves of course that the Convention is not seeking to return the child to a parent or to a custodial situation but is based on the concept of returning the child to their country of Habitual Residence so that future custody

decisions can be made in that country. That may involve in certain situations returning a child to their country but to an institution within that country. It's not wholly unusual to have situations where a child is returned into social care. Those are generally situations where either a child has been removed from social care or removed in a situation where there were social care issues about the child before the removal.

Or, as I have stated the Court will look to whether it is possible to return the child with the person who initially wrongfully removed child. There are a number of issues that will arise from that. Normally, the first is how can the parent who abducted the child go back because they may have committed a crime because in certain countries parental child abduction is a crime. I don't believe it is in Japan but certainly in the US it is and in the UK it is.

What would happen if you have, say, a 2-year-old child who is being sent back to say, Minnesota after her mother removed her to the UK. I do not pick on Minnesota, I have nothing against Minnesota, I have never been there. There is, in Minnesota, a warrant for the mother's arrest. Is that in the child's best interest? She comes off the plane and she is met by the FBI and she is arrested. She is taken off to incarceration and then the child is left, not through, the left behind parent's fault, or the child's fault with a parent who has not seen that child, that very young child for maybe 10 months, 12 months clearly that will be disorientating for the child. The issues are, how are you going to provide for that?

The answer is that the Sending Court will seek to create a framework to return the child that will ensure that the proper provision is made for the child's immediate and short term needs and that the return is handled in a secure and non-dramatic fashion.

The issues to be addressed are

(i) the practical arrangements for the actual return;

(ii) the arrangements following the child's arrival – including dealing with potential arrests;

(iii) the short to medium term arrangements for the child's living and care arrangements until the family court can hear the matter in the Requesting State. The objective is not to seek to impinge on the jurisdiction of the Domestic Court but to make provision for short term measures only.

Undertakings are solemn serious promises to a court and they are so serious that they have the same effect as a court order. I have listed a range of undertakings that can be given in my paper. In the UK a court order may say something like this. Number one that, the mother will within 14 days return the child to, say, Minnesota. Two, that the flights will be paid for by the father. Three, that the father will abide by the undertakings he has given in an attached schedule. You will go to the undertakings in the schedule. This may say things such as to the father will not support or instigate a prosecution against the mother in respect of the abduction. He will be usually requested to produce evidence that he has requested the prosecutor not to continue to prosecute the mother.

Two, that he will not, if the mother makes allegations of domestic violence, molest, harass or otherwise interfere with the mother. There is often a provision that the address of the returning parent and child will be known to the authorities in that state but not to the left behind parent until the authorities in the home state say it's secure for the address (or not secure) to be known.

The mother will undertake to stay at a named address and to give notice to the central authorities and in the court and social services of that address.

There will usually be an undertaking that the pursuing parent will not take the child from the care of the returning parent until the Court in the Home State orders otherwise. This is to avoid a situation where for example, the mother gets off the plane and the father comes with a custody order and takes the child. There will be an undertaking that that will not happen. There can be various other undertakings, which can include provision of interim-maintenance (money so that she can pay rent or feed herself and the child), provision of other documents that maybe needed to support immigration, there can be a various range of things that will ensure that the child is returned in a measured, non-traumatic and certain way those undertakings will then be conveyed to the family court in the home state and to the Central Authority. The judge who will hear the custody case will be aware of what the issues were because he will have all of the papers from the Hague case and be aware of what those promises were. Those promises will stand ~~in~~ until that judge in the domestic family court hears the case and makes a custody order.

I want to look at mediation. You may say, well, Anne - Marie, you know, that's all very good but that all sounded horrendous. You were using words like abduction, kidnap, arrest, criminal offences, so what has that to do with mediation. How on earth does that fit in with the legal process and the policy concept of the convention? The starting point for mediation in Hague cases is Article 7 of the Convention. Article 7 says, and I don't have it in front of me, but more or less says that each state who adopts the Convention has a duty to to take all appropriate measures to secure the voluntary return of the child or to bring about an amicable resolution of the dispute. Article 7 doesn't say how the party States should do that. It just says that's their obligation.

Different States approach that article in different ways. In some States the first starting point is Article 7. As I explained to you the first thing we do in the UK is to go to court to obtain holding orders. In other States the starting point is to try to resolve it voluntary before anybody goes to court. In countries such as Austria, the abducting parent will receive a letter and it will say: 'Dear *Mrs. Vontrap* you have abducted 7 children, who should be having singing lessons in Austria. Would you like to take them back? You have 7 days to do so voluntarily'.

Most countries view Article 7as a facilitating article and say that the Central Authority and the courts of course have a duty to assist in voluntary resolution. In the UK and a number of other states (as we are going to be talking about for the next 2 days) have looked at facilitating that article by way of mediation. But as you will hear from your mediation specialists over the next 2 days that is not, and it could never be general family mediation.

Mediation in Hague cases will have many aspects of general family mediation and mediation principles, but certain aspects have to be fine-tuned and systemized to deal with what is, thankfully, the rare but nonetheless significantly difficult area of family dispute which is child abduction. Child abduction has aspects to it including State obligations and a wide range of interested parties which the mediation process and scheme must take into account. It has to be wider than just the parents and their children. You will often see a parental abduction case hit the press, it will be in the newspapers, there maybe documentaries about the case, so there is a public interest. You will have all seen cases where there is interest at the highest level of interest to the point where you have situations where the then President of the United States, Bill Clinton was discussing a case with the Mexican government. They are the highest levels. There will be focus groups, interest groups, political groups and lobbyists. The interest in that family is much wider and you cannot conduct it as an insular family problem. Thus there must be confidence in any mediation scheme that is set up and mediation must compliment the Hague process.

It doesn't mean that all concepts of mediation go out of the window. In the UK in order to take account of those needs and the needs of the parents we have adopted the Reunite

International Child Abduction Center Scheme which has taken over 10 years to evolve. That takes into account not only the needs of the parent and the child but also our treaty obligations. One of our treaty obligations is, for example, that must hear these cases speedily. The notion of general mediation is that you mediate at the pace that the problem and the family require. Some cases need lots of mediation sessions with big gaps in between and some don't. In child abduction you have to have an eye on the treaty obligation to deal with that mediation within a timescale that takes into account the obligations of the court and the court process for a summary return hearing.

In the UK if the parties want to go to mediation and if there is an acceptance that they may benefit from mediation they will enter that at the second court stage. Thus following the first court hearing where the passports are taken, we know nobody is running away, we know where the children are, and everybody is staying put, they come before the court and they may indicate that they think there is potential within their family to mediate. If that happens, the court processes are 'put on hold' to allow them to enter into mediation. The court will be aware and the judge will be aware that this family is going to mediation. It will say on the front of the court order for example 'on the 1st of December 2012 and upon the parties, agreeing to go to mediation, the case will be heard on say, 3 weeks hence. Then everybody will come back and report on what's happened in the mediation. If they have not been able to reach an agreement the case will proceed in accordance with the normal court timetable, the evidence will be filed from both sides and the case will proceed to a final hearing.

Whatever happens in the mediation unless they reach an agreement is privileged. If they do reach an agreement that agreement can be implemented through a court order. As to the modalities of mediation itself I am not expert, I am a lawyer. I know it's a very difficult area of mediation and process as you are going to be hearing over the next 2 days from some very real specialists with some very real experience in these cases. Thank you very much.

Tatsushi Nishioka
Solicitor Anne Hutchinson, thank you very much indeed regarding cross border child custody disputes and the ideal modality of the Hague Convention mediation. Thank you very much based on the practitioners' experience who have become engaged in actual Hague cases. Thank you very much. It was a wonderful speech.

Our next speaker is Mr. Isomi Suzuki. Mr. Suzuki is from the Japan Association of Arbitrators, Chairman of the Study Group on Private Mediation Scheme. He is the Director of Japan Chapter of Asia Society of International Law, President-Elect and Country Representative of LAWASIA, executive director and Vice Chair of Japan LAWASIA Friendship Association amongst other important positions. Mr. Suzuki, the floor is yours.

"Challenge of International Mediation in Japan in response to the Hague Convention Cases"

Isomi Suzuki
Attorney at Law, Chairperson of the Study Group on Private Mediation Schemes of Japan Association of Arbitrators

Isomi Suzuki
Good afternoon. I would like to extend my deep felt gratitude to the Ministry of Foreign Affairs led by parliamentary Senior Vice Minister Suzuki. I also would like to render my gratitude to the Japan Association of Arbitrators and Japan Federation and Bar Associations. Also the speakers and the panelists, who have traveled long distances to join us from overseas and also my thanks go all participants.

Today, I would like to talk about the achievements of the study group on the private mediation schemes of Japan Association of Arbitrators. This is indeed a meaningful

opportunity for me. This study group which I am serving as the chairperson was established 2 years ago. The members are lawyers and attorneys who have experience in the international family law. We are talking about ratification of the Hague Convention. International family related issues particularly with regard to children are being discussed in the various sectors and societies.

International disputes and resolutions thereof, in that interest we believe that the mediation would be quite meaningful. During the first year of the study group we studied literature. In the second year we launched a pilot case and in my presentation today I want to introduce to you the outline of this pilot project so I do sincerely hope that this will provide some basis for thought to stimulate the panel discussion that is to follow.

I will be using the term 'mediation'. On a provisional basis I would like to convey to you the definition of mediation. I am not using the term conciliation but using the term mediation. According to my understanding this is to promote understanding towards agreement the parties concerned so this will be assistance being provided by third parties. There is no agreement that the parties will subject themselves to agreement provided by mediators. Mediators will not provide agreement which will be taken as binding. Providing assistance with regard to the facilitation of the agreement, the mediator's role is to promote the parties to directly reach agreement. That is the positioning of the mediator. I am using the term private mediation but from now on, I will just use the term mediation, meaning private mediation.

I would like to go into the outline of the pilot case. Since this is a concrete case, in handling and treating this case I have to respect the privacy of the parties concerned and also respect the confidentiality pertaining to mediation. Allow me to describe the case in rather abstract terms and not go into the concrete details with regard to the particular case. I will not be able to respond to certain specific aspects of the case even if questions are raised.

Now, with regard to the outline of the case let me introduce the parties. The father is of UK nationality. The mother is of Japanese nationality. Between the parents there are two children and they were both born in the UK. For 10 years before the mother returned to Japan with the two children, the marriage life took place in the United Kingdom. A few years ago the mother returned to Japan and is living in the western part of Japan with her two children. That is the outline of the case.

Since this is a pilot case, why is it that this case was subjected to mediation? The father side contacted Reunite in the United Kingdom and conveyed his wishes that he wants to pursue the case through the channel of mediation. On the Japanese side, there was a Japanese attorney representing the mother and there was contact by the attorney to the PT member. The mother also gave her consent that she is willing to talk to the father through mediation. Based on this confirmation the two parties came to agreement with regard to participation in the mediation. We actually drafted a document and asked the two parents to give their signature in order to start the mediation. The basic conditions for the mediation is actually the scope which will be dealt with by the mediation. That is the first and foremost issue. The father wants to have contact with his children, also the confidentiality obligation. The resolution can be brought about only through the free agreement between the parties. At any stage in the mediation the party is able to withdraw the participation in the mediation. The final issue was who will bear the cost. In the study group on private mediation we are receiving funding from other organizations so we asked the mother to bear a certain level of expense but Reunite will not receive any payment from the party. After disclosing to the father that the mother is going to bear part of the cost and after this information was given to the father and upon the understanding the father is not going to pay the expense for the Reunite the mediation was started.

After the bases were determined we entered the stage of screening. At that stage of the screening many cases rendered that they are not appropriate for mediation and that is discovered. With regard to the screening for this pilot case Reunite has more knowledge and therefore we conducted a screening using the form that Reunite has structured. The mediator from the Reunite based on the screening sheet has raised questions, asked questions and after rendering judgment that certain requirements are met under the screening sheet we will proceed to the next stage.

Upon providing the explanation two points were pursued in the discussion. One was how to limit the scope of the consultation since this is the pilot case. On the other hand, we were aware of the fact that mediation will be conducted in the context of the Hague Convention going forward. We narrowly focused on the issue of the access or the contact by the father to the children.

For contact with the father how are we going to arrange the children's visit to the UK? That was to be primarily arranged and how this narrowly focused issue can be mediated. Then we thought of the following procedures. One of the two parties to mutually exchange visits in terms of time, in terms of economic expense will be practically impossible. Each party will conduct interview with the mediator in his or her country and then the two parties, the two mediators will actually have a video or audio conference through telephone. We set up the arrangement in such kind of a bilateral video conferencing through telephone. In the screening we set this up, so questions were raised from the UK party to the Japanese party and that is how we have completed the screening stage.

On this issue of contact we had prospects that we will be able to have consultation on this question of contact. We talked about the starting time for the mediation. We expected that the consultations would require a few hours and minimum we would require 4 hours. Depending on the case even if we are not able to come to agreement on the issue of contact we felt that we would resolve it the following day just in case and therefore we set up the consultation for Saturday. There is also the time difference between Japan and the United Kingdom. This would be afternoon time in Japan and morning in the UK. We felt that that would be good so we started at 5 p.m. Japan time and 9 a.m. UK time. The participant in the mediation on the UK side is the father in the UK. Sandra the mediator who will be speaking later participated from the UK side. On the Japanese side, myself Suzuki, became the mediator of the Japanese side. We also had a interpreter. Since this is the pilot case with the consent of the parties we also had a reporter who would take records. Since this is bilateral simultaneous mediation through teleconferencing, what would exactly be the forum? We felt that this was a kind of a virtual forum. This is a kind of a virtual mediation. I would like to share with you basic information with regard to the process of these consultations. Actually, this was existing against the backdrop of the divorce, the completion of the divorce process and the issue of contact between the father and the children. At the start, we felt that the two issues cannot be separated from each other but we saw the divorce issue resolved. I will give you more detailed explanation later on. In this mediation, we felt that it will be possible for us to limit our attention to the issue of contact and therefore we separated the issue of the divorce.

The second issue was coordination with regard to the scheduling of the visit to the UK. The children should be visiting the United Kingdom at the time of the summer holidays. Since this coincided with the timing of the London Olympic Games, how we will set up the air travel? With the ending of the summer vacation for the children to make it to the school term, at what timing they should be returning to Japan and how the flights should be reserved? Another point of interest for the father’s side was during the time that the children are not visiting him when they are staying in Japan by telephone, mail, or Skype the father wanted to directly contact the children and to make sure that this is not impeded by the mother or else perhaps assistance can be provided for such communications by the mother.

The fourth issue was concerning future contacts. What was discussed was for the children to visit the United Kingdom, and at the end of the summer vacation will be returning to Japan. After that the visitation between the father and the children, what would be the next occasion for the visitation? Additional mediation, so that was the fourth issue that was being pursued.

With regard to the language that was used, it was conducted in English. The mediator was Sandra on the UK side that I referred to earlier on. The Japanese side had understanding of English. I was going to serve as the mediator but we got to the direct communications between the parties and the communications between the mediators that was to be conducted in English language.

In the mediation, in addition to that we had attendance by the interpreter. Not simultaneous interpreter but consecutive interpreter. In communicating the intention of the party and to have full understanding with regard to explanation by the other side, interpreter intervened with the consecutive interpretation.

With regard to the documentation, at the time of the screening stage there was an agreement consent for start of the mediation. At the end of this mediation there was a document of an agreement that was reached. Each document was being drafted in English language and not in the Japanese language. But since these are documents, we had the oral translation from English to Japanese to provide full explanation to the mother side.

When we conducted this mediation there were several issues. In the case of adopting Hague procedures these issues would certainly be relevant. Therefore that is what I would like to talk about. The one point is that this was distant remote consultation between UK and Japan and of course there is a geographical distance. One way requires more than 10 hours of travel. As for the travel expenses for the airplane it's worth an average wage for 1 month. The airfare is expensive. On top of that during the stay, the accommodation for 1 or 2 days of mediation meeting, half of the week or as much as 1 whole week will have to be spent in either of the country. Therefore, for the parties and the participants, there is a heavy burden. This is one difficulty for a remote consultation. Therefore, at this time what was devised was as follows which is the virtual forum, which is a bilateral teleconference mediation. The issue in this case was limited to the contact between the child and the father. Plus, one of the party, traveling by air to the other location considering the cost benefit balance, we ended up deciding on this teleconference virtual forum. It is telephone conference therefore the mediator himself or herself will not have a face to face contact with the mediator on the other side of the world. This is one difficulty. Between the parties again, this is not a face to face physical communication. Mediator to mediator is neither a physical face to face. There are limitations in all regards. In that regard, this remote distant teleconference, considering the cost this is unavoidable, this is just the last resort for convenience. However, there were a large number of lessons learnt in terms of difficulty. Going forward in order to continue to use remote teleconference consultation there are many issues that have to be overcome. Therefore during the panel discussion, hopefully, Sandra will tell us about the experience and talk together, share the experience, and think together with you.

Regarding the divorce that I briefly referred to earlier, according to my understanding in the case of mediation there are cases that are conducive and those cases that are not conducive with mediation. Many cases are conducive with the mediation but the parties do not realize that. But, there are many cases where mediation is suitable more than the parties themselves believe. From a confrontational mood it could be switched to amicable, cooperative consultation with providing the information. In this particular case divorce was an issue behind the scene.

Before the screening date was determined, there was an agreement to participate in the mediation. Once the date of screening was determined, in the UK there was a filing made with the British court for a divorce. On the day of screening the order of the divorce was carried by the mother who brought it to the mediation in the Japanese setting. Between UK and Japanese the largest issue in the case of divorce, despite an agreement between the mother and the father under Japanese agreement to divorce, it is not immediately effective. One reason is in Japan by filing the divorce by agreement certification the custodian has to be determined and be prescribed. Depending on the custodian which one of the two parents maybe in Japan, there may be an absence of agreement. Therefore, there is an agreement that the two will divorce but if a single custodian is not determined that would not be effective. Throughout the process, possibly divorce could be one issue. On top of that not only the divorce but the access of the child would be another entangled issue. Therefore, if the divorce will be settled maybe the contact of the child could also be determined. However, the UK court ordered divorce and therefore there was a unilateral decision of divorce in the UK court. The decision of divorce in absentia was effective. The mother in Japan, if she does not oppose then that UK court decision of divorce would have become final and conclusive. It did become final and conclusive order in the UK therefore in the UK the father's divorce became effective. However, in Japan whether the mother's divorce would go effective, the order in Britain, whether this would be recognized in Japan, a procedure will be required. Therefore, the mother had to file the UK divorce order with the Family Registry Office in Japan. After the filing despite this decision in absentia it was the mother herself who had been decided in absentia and therefore this filing was recognized by the Japanese authority which is the local government. As a result before this mediation was initiated the two parties did manage to realize an effective divorce.

One major issue of the divorce was resolved and therefore the remaining issue was the visit to the UK and the contact with the father.

During this consultation basically mediation was the scheme. A court was not involved, therefore even if agreement was reached it would only be a private out of court agreement. There were some limitations if it is out of court. For example, what should be the timing of visiting the UK? When should be the return from the UK? Despite such agreements there is no legal guarantee that those promises would be fulfilled. The father's concern was that the promises that 2 weeks later on the child will visit the father in the UK but the father was concerned that the mother may change her mind. Then, when the mother changes her mind whether any enforcement would be possible, was the concern of the father in the UK.

From the mother's perspective, whether the child would really return to Japan before the summer holiday ends, whether the father will keep the promise, if the father does not keep his promise what happens. Those were the bilateral concerns by both mother and father because of the absence of legal guarantee of enforcement.
Normally, if it was possible to have the same effect as a final and conclusive court decision in mediation agreement that would alleviate this problem. However, under the current legal framework when there is a private mediation agreement, this agreement should be submitted to the court conciliation and incorporated into a written record of mediation compromise, then using that would only allow it to have the same effect as the final and conclusive court decision. That is about Japan. About the Britain case this would be explained later but this additional procedure will be required for this mediation compromise to have the same effect as a court decision.

At any rate, the courts between the two countries will have to cooperate. The lawyers of the two countries will have to fully cooperate in order to minimize the cost. Regarding this reached agreement, in order to have the same effect as final and conclusive court decision there are additional procedures where the cost and time required were explained to the parties. As a result, both mother and father said that that is not required, agreement would suffice.

That was the conclusion. Going forward, thinking about future mediation, how to enforce this mediation agreement, how to give the same efficacy, same effect as the final and conclusive court decision to the mediation compromise would the future remaining challenge. There are other issues identified.

Again, these are some of the issues I will list. First, the childrens' visiting the UK. What happens to the intention and the will of the child? In this particular case there was no direct questioning of the child. The Japanese attorney, the representative and the mother made the questioning to the children. There was no direct questioning of the child. The expense of the child visit to the UK, the father was to pay. During the stay in the UK, the location of the stay in the UK, accommodation and spectator visit to the Olympic City, these are all discussed. Where they would stay and the father's living circumstance in the UK was given consideration. For example, the grandparents of the father in the UK whether they should be a contact or no contact. There were some issues but all those were discussed as some derivative matters. If you observe this list they may look simple at the surface. However, for each and every one talking about the intent of the child, who pays the expense, sometimes there could be misunderstanding or distrust. Therefore, for each of the issue sufficient time had to be spent in order to discuss about these matters.

That is the pilot type of mediation that we had tried. Going forward, in order implement mediation under a Hague framework, what should be considered is an important point. As Anne-Marie has already discussed what is covered by Hague when there is a wrongful removal or retention, to ensure the return of the wrongfully removed or retained child into ensure respecting the custodian and access rights. Return and the access or contact are the focal point of Hague. This pilot mediation focused on only the access or the contact part of the coverage and scope of Hague. The positioning of mediation was explained already by Anne-Marie Hutchinson. In our study group we looked at Article 7 which is the effort of cooperation by the Central Authority. One of those efforts is to secure voluntary return of the child, what would bring about an amicable resolution? To bring about amicable resolution, in the 2006 special committee, there was a reconfirmation of the 2001 recommendation. By referral of parties to specialist organization providing an appropriate mediation service was the language used. In order to bring about amicable resolution referral to specialist organization that provides appropriate mediation service, in some cases this referral is recommended, which is recognized under the Hague framework. However, once mediation is initiated, once mediation starts the issue is the return and contact but there are many other issues that appeared. In particular is the background circumstance it involved; divorce, separation, a consultation maybe required on matters other than return or contact. As for the future, residence of the child could that be subject to consultation? Under the Hague it should be the jurisdiction of the court of the country of habitual residence of the child. Whether the other agreement is possible by mediation or could it be agreed in mediation of non-return? These are some of the issues. I would be looking forward to the discussion by all of you and ourselves here. My personal observation is that the right to withdraw the petition or the agreement to the withdrawal of the filing of the petition is left to the parties. Therefore, since the parties do have the right to withdrawal and agreeing to the withdrawal, then by employing the Hague framework, but in order to resolve further scope or wider scope of family issues, mediation seems to be effective. However, what has to be considered is the underlying spirit of Hague which is the prompt resolution, a prompt return. This should not be undermined according to my interpretation. But since there are many academics here in the hall I am looking forward to hearing from all of you.

Finally, this was a virtual mediation that we tried. Is it possible to use this for amicable resolution? I shall be brief. At least, if Japan is involved in the resolution of the matters under the Hague Convention, the mediation would be designed for a remote distant coordination between parties in far away countries. In that event, to have a mediator only in one of the countries, or a mediation taking place only one place, would be fitted for the

resolution? This is the start point of this whole question. In the event of this kind of distant mediation, I think it is useful for both parties to have respective mediator of the home country, or the Jurisdiction. Since this is a mediation there is a flexible scheme that could be employed. During this pilot mediation, I was the mediator. At the same time under the British laws or the Japanese family registry legal systems there was a separate lawyer who were knowledgeable about the UK law or Japanese family registry systems or other legal matters to provide advice. Therefore, in some way or another there must be legal experts or non-legal experts including psychological experts or experts about social background and practices. Some kind of advisory systems would be useful or necessary.

Another extremely important point is the presence and involvement of the court. Basically, mediation is consultation, talking with each other but it is conducted sort of behind the shadow of the court as we say. What would happen if the case was brought to the court is the question that would be a beacon to guide the case to resolution. In that case a prediction of the court conclusion would have a big impact on to the parties in mediation. Therefore, if Hague were to be introduced, in the court of the habitual residence what the court might conclude or if it should be a return to the home country, what would be the conclusion of the court in the home court? There will be a certain forecast and based on the forecast by the court the mediation can be encouraged and promoted.

In that regard, going forward, the court involvement related to the Hague will be required, and precedents and experiences will have to be accumulated.

That would have a big impact in order to promote mediation. Today, the implementing law is distributed and there are experts here who have been involved. As far as I have looked at the draft, mediation does refer to court provided mediation. On top of that mediation or out of court mediation and it's positioning still has to be studied further. According to my observation of the draft out of court is not prohibited. It is permitted, depending on the interpretation. Interpretation from Article 7 out of court mediation may be encouraged rather than prohibited. This is another area where the frank opinions from all of you are welcome. If this interpretation is possible, then there is the family court mediation. In case of family court the written documentation would have the same effect as a final decision of the court. Mediation and this pilot type of mediation could supplement what the family court mediation can provide.

Considering mediation in this manner, specialist organizations that can work together with courts and Central Authority will have to be considered in Japan. In that case we need a human resources pool of mediators who understand multiple cultures and multiple languages and possibly if those mediators are multilingual and can understand across culture. That kind of pool of mediators will be required. On top of that, the parties will need legal advice and eventually, possibly consultation towards resolution is required. Lawyers who can represent the parties will have to be cultivated.

One of the largest issues is the cost expense. As I thought about these matters these are technical activities. In order to enable these kind of activities expenses have to be covered. Expense covering mechanism is required. It is my personal opinion but in order to realize the best interest and best welfare for the child, this is a public common interest of the society as a whole. That has to be recognized.

In particular, if it becomes a cross border family dispute then a cross border mutual understanding must not be undermined. In fact, by successfully resolving these issues it could be an important juncture to further deepen cross border understanding. Therefore, at our study group we will continue our effort because we believe that this is, after all, a matter of international mutual understanding. We will share this recognition with the courts and

Central Authority and continue our humble, modest contribution. Thank you for your kind attention.

Tatsushi Nishioka
Mr. Isomi Suzuki, thank you very much. Based on the pilot mediation how to implement Hague Convention, what might be the challenges and issues in Japan were introduced. Thank you very much for your valuable experience and messages.

Ladies and gentlemen, this is the conclusion of the keynote speeches. We are slightly behind schedule therefore the break will be until 2:40. Panel discussion will start from 2:40. Please return by 2:40.

The translation receiver should not be taken out of the hall. If you wish to ask a question please hand in as quickly as possible, before 3 p.m. There will be no break between the panel discussion. You are requested to write your question on the paper, put it in the box at the reception during this break. Thank you.

Panel Discussion (14:30-)

Tatsushi Nishioka
Ladies and gentlemen, the second part of the program will start. Please kindly take your seats.

Thank you for waiting. The panel discussion will start. 'Mediation in the framework of Hague Convention - Learning from experiences of Germany and the UK.' After joining the convention the obligation of the Central Authority is to promote amicable resolution. The experience of UK and Germany who are advanced experienced countries under Hague will be learned in order to make use of them. In the practice of Japan I will ask the moderator Ms. Mikiko Otani and Ms. Miyuki Sano, both of them are attorneys of law. I will hand over the microphone to Ms. Otani and Ms. Sano.

Ms. Otani, Ms. Sano the floor is yours.

"Mediation in the Framework of the Hague Convention
- Learning from Experiences of Germany and the United Kingdom - "

Moderators:
Mikiko Otani
Attorney at Law, Member of the Study Group on Private Mediation Schemes of Japan Association of Arbitrators, Vice Chair of the Hague Convention Working Group of Japan Federation of Bar Associations

Miyuki Sano
Attorney at Law, Member of the Hague Convention Working Group of Japan Federation of Bar Associations

Panelists:
Christoph Cornelius Paul
Lawyer, Chair of the Board of Mediation in International Conflicts Involving Parents and Children (MiKK), Germany
Sandra Fenn
Expert for the Mediation of Hague Convention, reunite, United Kingdom
Masayuki Tanamura
Professor, School of Law, Waseda University
Yoshiko Aibara
Attorney at Law, Member of the Hague Convention Working Group of Japan Federation of Bar Associations
Isomi Suzuki
Attorney at Law, Chairperson of the Study Group on Private Mediation Schemes of Japan Association of Arbitrators
Akio Miyajima
Assistant to Vice - Minister for Foreign Policy, Foreign Policy Bureau, Ministry of Foreign Affairs

Mikiko Otani
Thank you very much for the kind introduction. I am Mikiko Otani. I would like to serve as the moderator from now on. I am attorney at law. As Mr. Suzuki has referred to I am also a member of the Study Group on Private Mediation Scheme of the Japan Association of Arbitrators, I am also Vice Chair of the Hague Convention Working Group of Japan

Federation of Bar Associations. I look forward to your cooperation during the panel discussion.

Miyuki Sano
I am Miyuki at the Tokyo Bar Association. I am also a member of the working group at the JFBA. Thank you.

I would like to introduce you the members of the panelists starting from the left hand side. On the foremost left we have from Germany Mr. Christoph Cornelius Paul, lawyer. He is Chair of the Board of Mediation, International Conflicts Involving Parents and Children, MiKK and he is involved in the training of mediators. I look forward to your cooperation.

Next to him from the United Kingdom we have Ms. Sandra Fenn. She is expert for the Mediation of Hague Convention, Reunite, in the United Kingdom. She is special case welfare officer and she has many years of experience. On her right we have Professor Masayuki Tanamura of School of Law of Waseda University. He is specialized in civil law, family law and he is also mediator of the Tokyo Family Court. He is also the Ministry of Justice Conciliation Committee Member.

We have next to him Ms. Yoshiko Aibara, Attorney at Law. She is Member of the Hague Convention Working Group of Japan Federation of Bar Associations. She is also Hague Convention legislative council and she is also the Chair of the Guardian Center at the Dai‐Ichi Tokyo Bar Association. We also have Mr. Suzuki who spoke earlier and he will also serve as the panelist. On the foremost right we have Mr. Miyajima, Assistant to Vice‐Minister for Foreign Policy of the Foreign Policy Bureau, the Ministry of Foreign Affairs.

First of all, I would like to explain to you how we proceed with the panel. First of all, the panelists will talk briefly from their respective perspectives. Mr. Suzuki has given his keynote speech. Therefore, he will join us in the discussion after on, but there will be no initial comments by Mr. Suzuki.

After the initial comments then, as the moderator we would like to ask a couple of questions to the panelists asking the panelists to respond. After that question from the moderators it will be time to take questions from the floor. There should be about half an hour. As was introduced by the moderator if there are questions, please write it on the paper and put it in the box, or give it to the staff.

You can see that Ms. Hutchinson is not on the stage. However, if there are questions to Anne-Marie at the end there will be some time left to cover those questions. Therefore, if there are any questions that you wish to ask Ms. Hutchinson you are welcome to hand in the question paper.

First of all, may I invite Mr. Miyajima as the organizer Ministry of Foreign Affairs, Miyajima-san, please.

Akio Miyajima
Thank you, I am Miyajima. Thank you for this opportunity. At the beginning of the symposium, Mr. Suzuki our parliamentary senior vice minister for foreign affairs has made a comment. Therefore, I shall not be too long but the Hague Convention is seeking amicable resolution and voluntary return. In the case of Japan, the Ministry of Foreign Affairs is planning to be the Central Authority in the event of conclusion. The role of the Central Authority will be extremely important.

Rather than going to court, indeed using the court is one option but an out of court consultation option is an important provision to be prepared for the Japanese community. Therefore, at the Ministry of Foreign Affairs we are deeply interested in today's event and discussion. We are confident that today's discussion will be a great help for us to conclude and would also be a help after conclusion. Thank you very much.

Miyuki Sano
Thank you very much. Then we will invite other panelists to talk about the role of the Hague Convention starting with Mr. Christoph Paul. In Germany what is the role of mediation, what are the required regime systems Christoph?

Christoph Paul
Thank you very much. I would like to start with explaining how we work in details. The mediation is organized very close to the court hearing. The reason for it is that the left behind parent is invited to the court. If this left behind parent is traveling to the court hearing he can at the same moment attend the mediation process. So for logistical reasons it is very helpful to organize the mediation very close to the court hearing.

The second issue connected with this are the costs of the mediation. If you have someone flying in from a long distance it's very helpful if this left behind person only has to fly in once. In Germany, the left behind parent and also the abducting parent get legal aid in case they are not able to pay for the court and attorney`s fees and also the travel expenses and accommodation for the court hearing is covered by the legal aid. Our judges are happy to ask and invite the parents. We organize the mediation very close to the court hearing so we have the chance to use this flight on the expenses of legal aid for the mediation.

Then, there is one other issue which is the most essential. In these cases mostly there is trust gone. Abduction is a very serious and severe interference in the relationship of both parents. The left behind parent is in a situation where he mostly has no trust in the country where the abducting parent resides . As long as they have had a happy marriage, they love the country of the other parent but as soon as the marriage breaks off, they are afraid what can happen there. They mostly don't speak the language, they don't have any social contacts. Because of this situation, it's our experience that it's a great help organizing the mediation very close to the court proceedings.

We heard from Anne-Marie how important the cooperation between the judges and mediators is. The judges refer to the mediators, the judges must know that the mediators are trustable that they are well trained. They give the case into the hands of experts, and the left behind parent must be sure that whatever is done, it's done in the shade of the law, and in the shade of the court proceeding. There is a close connection and combination between the external mediation on the one side and the court proceeding on the other side. The last issue is when you come to a settlement within the mediation, and you have the court proceeding close by, you can immediately enter this settlement into a court order, so you can have a good and reliable result. This speeds the mediation sometimes up. What has been worked out in mediation today may be entered tomorrow it into a court order and this is also a motivation for the mediation.

Miyuki Sano
Thank you very much. Next is Sandra Fenn, the social worker's involvement is important. The floor is yours, please.

Sandra Fenn
I am Sandra Fenn. I am from Reunite in England. Thank you so much for giving me this opportunity to come over and talk to you because I am very, very involved in the mediation,

which I think is a last chance for parents to take back control of their lives and their children's lives before the courts make that decision for them.

I think it's really important that it's a chance that they want to take and not a choice that they are made to take. It has to be voluntary. I have been asked to talk about the role of social work in mediation because the model that we like to use, if we can, is co-mediation where we use a man and a woman from both cultures, preferably a lawyer and somebody that we call a lay mediator who has probably some sort of a social background, that doesn't mean to say that they are social workers. They can be ex-teachers, ex-policemen, councilors, who are trained in mediation. That's the important thing. If possible, we do like to have a lawyer and somebody with a social work background to do the mediation.

But, I have to say practically that's not always possible because these cases are very short notice. We have to mediate for 2 days and although we have a good pool of lawyers who are mediators very often they are just not available for 2 days at that much notice. We do use two lay mediators, occasionally two lawyers. We have had feedback from our parents and for them, they say that doesn't matter. What they want is two good mediators who could help them through this situation. Yes, both are preferred but practically it's not always possible. It's better we found to do it than to say, no we don't have exactly the right combination. It's important for us that the mediators we use are very experienced mediators with a very good knowledge of families and how international families work and the repercussions for those children.

As far as the voice of the child is concerned again you very, very seldom consult the children within the mediation because we do have a very good court welfare system that will do a report from both parents and the child and we have a copy of that report. We are inclined to use that within our mediations, again, because of time and cost restrictions. That's how we get social workers involved in our mediations is through written reports. I think that that is probably all I want to say at this stage on using social workers within the mediation context.

Miyuki Sano
Thank you very much. Next, Professor Tanamura, if you can talk about the Japanese circumstance, in order to deal with the Hague Convention what are the institutional challenges?

Masayuki Tanamura
Thank you very much for the kind introduction. I am Tanamura of Waseda University. As has been mentioned earlier I would like to give a brief introduction with regard to the situation in Japanese family courts. According to the constitution with regard to foreign external cases there would be a multiple number of jurisdictions and laws involved. And then, we have dispositions such as actually the expense for the care of the child and also the access to the child such as visitation and contact. Ten years ago in the year 2002 there used to be 76 cases of application. Last year or 2 years ago in 2011 this increased to a number of 245. In the applications for mediation we are talking about international custody mediation cases. The applications numbered 386 cases 10 years ago but in 2011 this increased to 651 cases meaning that this has multiplied by 1.7 times.

With regard to designation and change in terms of parent with the custodian rights, this used to be 249 and we have seen a sharp increase. When it comes to external foreign family cases, the international trial jurisdiction and the governing law become issues. In order to resolve the issues pertaining to children we have to have full understanding with regard to the cultural and life background of the parties, language, religion such background factors to the dispute. We need a broad understanding of the approaches taken to the parents and the approaches taken to the couples, as well as family background. Then, we have the differences in terms

of legal systems. The mechanism of social assistance may differ greatly according to the country.

I have been serving as the mediator in the Tokyo family court for many years and I have been working there for 19 years. The first case had to do with the foreign related external affair and the right of custody belongs to what parent according to international divorce and in terms of the right of access, that is to say right of visitation and contact. Which court will have the jurisdiction was the case and the law of which country will be applied? The issue which was more important was the intercultural conflict. Differences in terms of customs and habits and approaches taken to the family, approaches taken to the couple, the relationship between the two parents and there were discrepancies which caused the dispute to start with.

In that sense, the Hague Convention is to be ratified, Japan to become a contracting party. There will be international legal cooperation which will be realized in the context of this convention and scheme of the mediation through consultations or the Alternative Dispute Resolution, the ADR system. The voluntary agreement should be promoted between the parties and of course that is the desirable avenue. No one will reject that but in order to realize this what role should be played by the court and also by the prosecutor including the attorneys? How we will be able to come up with a mechanism to back this up? Particularly here in Japan these external foreign cases, international cases, we have seen a steady increase and we have accumulated certain experience. But going forward, we have to try to learn from the experiences overseas and how this can be embraced here in Japan. A while ago, attorney Mr. Suzuki talked about the pilot mediation case and how the various agendas, problems can be surmounted. That is the very reason why today's symposium is being organized. I hope that we will be able to come up with a solid outcome. Thank you very much for your kind attention.

Miyuki Sano
Thank you. Ms. Aibara from the practitioner's perspective, for Japan to ratify Hague, in order to promote amicable resolution what might be the practical challenges please?

Yoshiko Aibara
Thank you. I am attorney at law, a member of Tokyo Bar Association. Number one, in international cross border family affairs I admit, I am not that experienced in so many cases but I am surrounded with experts who are seasoned veterans. I am very nervous because I do not have much experience but the reason why I am invited here is because the moderators, both Ms. Otani and Ms. Sano in our floor, they are working group members of the Japan Bar Federation in the floor.

In the event Japan ratifies Hague what should be the implementing law suitable for Japan has been studied by the other members. There has been a study group including the colleagues who are here in the floor. Since I am the member I think I am invited here. But my comments will be personal not representing what the Federation is considering.

Today's topic is about private mediation. This is a very forward looking and deep, meaningful discussion. I am learning a great deal and very grateful to you all. I hope I will learn as much as possible. I hope that mediation in Japan will take root under the leadership of Mr. Suzuki. We hope to spread this method.

There are international guests, there are members from the media today in the floor. Therefore, in the case of divorce in Japan, if the taking parent is the mother I would like to comment on that. Since time is limited I will focus only on the case of the taking parent being the mother.

In Japan, when the child is very little or young and the mother decides to separate from the husband, having the consent of the husband to separate, gaining the consent of the husband whom she wishes to split from, that is not really possible. By breach of custody and if it is abduction, is it going to be prosecuted criminally? With regard to this question many of the mothers are really surprised and shocked because that is not the known concept in the Japanese community.

Whether this is right or wrong that is not the issue, it's the sense of failure, it is the emotional reality in the Japanese community. Many of the mothers who may become a taking parent are not aware in this regard. However, when it comes to cross border abduction there is an international rule and therefore information should be gathered. The issue on the side of the left behind father and in particular about the child, focus should be paid.

Earlier there was discussion about the Japanese sense of value. I do not think that Japan should refuse Hague just because of this reality today. But the starting point is that the psychological mentality of the Japanese mothers and the child must be kept in mind. Regarding the visitation and access in the UK and the USA, we heard earlier that 1 month under a non-custodian visitation and access are the common practice.

In the case of Japan if this is communicated to the taking mother and would she say, okay, I understand? No. It is very difficult to convince a Japanese mother who has taken her child over. However, in the family court, in the case of visitation the family court in Japan has become more proactive in permitting visitation because of the child's perception by the father or the non-custodian because in Japan very frequently the custodian is the mother.

The Japanese family court is becoming more proactive in order to permit the visitation with the non-custodian father. However, the mother's psychology has been explained, to explain about the visitation and about the framework and concept of the Hague, to make the mother understand is a very high hurdle, very difficult to convince the mother who has taken the child away. Then what is the possible approach?

In the case that I represent my clients, the mothers who have taken the child away feel solitude. The mother feels there is absolutely no support, the mother is in psychology where she is in the corner that there is no support. Probably this applies to non-Japanese mothers as well. However since, my experience is basically about Japanese mothers this is my observation. In that case when the mother is feeling so lonely, just talking about theory, just talking about law does not work. In the framework of mediation, in an out of court framework, in the most flexible consultation the method of mediation should be welcome. However, how to hold the mediation is another issue. It may be subject to domestic law, or domestic systems. Visitation and access and the Japanese institution of support would also have to be reviewed.

On the whole, I know that there are media and reporters here. Even amongst the mass media if the mother removes the child or if the mother is not sure what to do in terms of relationship with the father there must be as much information as possible regarding a method like mediation. Information must be accessible, social workers, the clinical psychologists and other experts. Non-legal experts' support are also important. I hope that the media members will also understand. I think that is the message we are hearing. That kind of support environment has to be established then mediation could be employed. From the child's perspective, issue must be resolved. That is my observation. Thank you.

Mikiko Otani
Thank you very much. We wanted to allocate a lot of time for the question and answer session with the participants of the floor. I have asked the panelists to be quite punctual

because the moderator is the time keeper and I think all of the panelists were very cooperative. They only spoke for a very short while.

From now, before entertaining the questions from the floor, upon listening to the comments by the various panelists, very important issues were raised. We would like to further explore these issues or perhaps try to come up with supplementary questions.

Mr. Paul, the first question is for you. You have experience of mediation in the context of the Hague Convention but you are also an attorney. One feature of the Hague Convention is that unless you have grounds to reject the return of the child basically speaking the child has to be returned to the country of habitual residence. From the perspective of the left behind parent, if the litigations started this is an expedite proceeding by which the child may be returned. However, the judge will ask the parents to come to court and then the judge may suggest the mediation taking place in parallel.

The left behind parent rather than resorting to mediation would want to dedicate themselves to the court proceedings believing that that will expedite the timing of the return of the child. Foe the left behind parent, what is the motivation for him or her to participate and cooperate with the mediation process? Could you rely on your experience in Germany to respond to this question please?

Christoph Paul

Thank you very much. That is a question which always rises. When the judges or the Central Authority in Germany recommend mediation the left behind parent wants to know what are the benefits of going to mediation, what do I get for it? Why should I choose mediation instead of waiting for a court order his question has to be answered on different levels.

First of all, the court proceeding is a very structured. The judges do their very best to help the parents to find a mutual solution. If they don't find a mutual solution in court they make a court order. But, the court proceeding is limited, is limited to what is presented in court, is limited to the basics of the Hague Convention which is the return of the child and as we heard from Anne-Marie- , And the court orders the return of the child, not the return of the child plus mother. And the court orders the return of the child not to the father, but to the country of habitual residence.

It is quite limited what the parents are able to solve within the court proceedings, whereas in mediation it's open. From our experience, many left behind parents and speaking in general terms - the ones who come to mediation mostly the left behinds are fathers, use the Hague Convention just to establish a contact with the child which is understandable. Sometimes the Hague Convention is the only weapon for the left behind parent to establish contact with the child. But how the contact can be done and what does the contact mean has to be worked out and that takes some time.

Most of the the judges in these cases are very open and take a lot of time, in Germany the judges take 5, 6, 7 hours sometimes up to half a day. But even then, the court proceeding are because of their structure limited whereas the mediation is much more open. We as mediators work - as Sandra said - at least on 2 days, there should always be a night in between the sessions. We have sometimes open sessions, where we work without any time pressure, so we have the possibility to find out the needs and the interests of the left behind and also of the abducting parent; this is much better possible within mediation than within the court proceeding.

The mediation is scheduled pretty close to the court proceedings; this means that the parents don't lose anything. Going into mediation doesn't mean there is an acquiescence. We always

start with “a written agreement to mediate “where it says that the parents are free to end the mediation whenever they want. The parents can return to the court proceedings whenever they want and they may ask the judge to make a court order. Mediation is something they gain on top of what is given to them by the Hague Convention and having such a possibility is a great advantage.

Mikiko Otani
Thank you very much. This is a similar question to Professor Tanamura. If Japan ratifies the Hague Convention, of course, there is a duty of the contracting states. If there is a return order by the court then promptly immediately, basically the child must be returned. Under that Hague framework, in the Hague cases the importance of mediation is being debated in respective jurisdiction. Mediation may be deemed as rather distracting to prompt return of the child because in the case of mediation, as Mr. Isomi Suzuki mentioned that there are other issues that could emerge. After all, a long time is required and it would deviate from a prompt return of the child that maybe a potential concern of utilizing mediation if Japan ratifies the Hague Convention, considering the duty under the treaty. On top of that in the Hague cases how to ensure prompt return but to enable mediation with appropriate expertise if there are any challenges remaining, please.

Masayuki Tanamura
I spoke about this earlier but in terms of international family cases, we see a steady rise in the number and especially those which are being resolved through mediation because of the differences in terms of the legal systems amongst the countries the cultural and mental confrontation come forward to the surface. In order to try to flexibly resolve the issues at hand but the crux of the matter is to be speedy and expeditious. If that can be done, mediation is an excellent process.

But what we are concerned is the ground for the rejection of the return. Particularly, the physical and mental domestic violence, abuse of the child, or to try to mentally corner or psychologically corner the child, which is domestic mental violence and of course if there is physical domestic violence included whether that is conducive to the court process, the screening becomes necessary. To expedite the return of the child and simultaneously we need to be cautious to see whether this is conducive or suitable for the court process. We have to have some kind of screening.

Another issue at hand is in terms of the language and the culture there has to be a certain level of understanding. There must be overseas experience in terms of mediators. In Tokyo and Osaka, the international mediation is being conducted on the appropriateness of the highly-professional mediators, and we have been able to prove that human resources who are suitable. However, we still have shortage of the human resources who can serve as mediators. We used the non-Japanese mediators who have expertise and who have experience in terms of overseas. I think we have to consider recruiting such mediators. Ms. Otani and Mr. Suzuki, they have international attorney network to exchange views and exchange information.

Perhaps, private sector, private institutions need to collaborate with the court. Within the mediation framework of the family court I have engaged in a number of international cases myself but the manpower that is available today and the experience that is available today is totally insufficient. We need to further step up and enhance this because as has been pointed out in terms of the procedures for the return of the child the mediation, visitation, and contact are not being discussed. Sort of rendering everything to the practical work that is going on, and that is the discussion in the Japanese family court, and the mediation. We need to brush up the skills of the human resources, who engage in the mediation process. We need some kind of training of the human resources and I think that's necessary as soon as possible.

Mikiko Otani
Thank you very much. In relation to this, the next question is to Sandra. Ms. Sandra Fenn you have experience as a mediator in Hague cases. In Germany and UK, in a relatively short time, Hague mediations are processed. Earlier, according to Mr. Paul close to the date of the court hearing mediation will take place. In the case of UK it is a 2 day, three sessions. It is very a prompt, speedy mediation according to what I have heard.

Whether the child should be returned to the habitual residence, should the child be returned what happens to the visitation and access, those have to be dealt with within a limited timeframe. It is a highly emotional session with high level of conflict. Whether the parents are able to decide under such emotions, what about the voice and the feeling of the child, how to confirm the circumstance of the child? How much can be done? There is an emotionally highly confrontational circumstance between the two parents. In order to arrive at an agreement as a mediator yourself what are the training that you have gone through please?

Sandra Fenn
I think it's experience more than actual training. Training is very well. Training is very good in the classroom. When you get out there and start doing the work, it's different. Will our cases, yes, they are emotional. They are very high conflict. There is most often domestic violence, alleged at least. In domestic cases if there is domestic violence alleged we very seldom mediate. But in the Hague, we do. If both parents want to mediate, if the mother who is usually the one that is saying about domestic violence, wishes to take that last chance to talk to the father and try and work things out, then we go ahead with that. We put in certain safeguards for her.

We take the mediation, we always do this, into a neutral space. We don't do it in court. We do it in a room where there are two mediators and both parents. We would never leave her alone with the father. First thing is we try to take it back as far as we can to a calm, more domestic view so they are not intimidated and try and get them as parents to work out the best for their children.

Now, they know those children. The courts don't really know them, the parents know their children. We usually have a report from the court on an older child but it very much depends on the age of the children. Sometimes these children are only a year old babies. The only safeguards we can put in really is the parents being honest. If we have any doubts about or if there are any allegations of child abuse then we don't mediate, that goes back to court and we stop immediately.

The view of the voice of the child comes through the parents, and it comes through the court welfare officer's report. If the child is old enough to have been interviewed, very often the cases that we actually mediate, the father believes he knows that maybe the child is better off with mom but he wants his contact. He has used the Hague because it's quick and it's free. He will very often say look, really I don't mind her staying away or the child staying with the mother wherever it is she is living but I want to secure my contact. Mediation is the last chance for those parents to do their best in the interest of their child, it's their chance to do that. They look after the interests of their child as best as they are able as parents. If they can't do it then it's back to court and a judge in the court would take over and make those decisions for them. That's how we protect or try to protect the children within the context of the mediation in the Hague cases.

Mikiko Otani
Thank you so much for those comments. We just heard from Sandra and also Mr. Paul about the contact. I want to raise this question to Ms. Aibara. In the case of Japan, the mother without consent of the father will take away, remove the child and that could be accused of

being an abduction, kidnapping is a surprising fact for the Japanese and that is the general situation in Japan which has been emphasized by Ms. Aibara.

What about visitation and contact, the right of access? If there is agreement in the court that the child is to be returned, and in other cases by assuring contact the taking parent can keep the child in Japan, for instance, there may be the agreement reached, particularly in either cases, especially in the visitation and contact. Unless there is common perception that that is necessary, it is difficult to reach an agreement. That is the case for the parents but for the relatives of the children or else the attorneys, the counsels representing the parents, the agreement on the visitation and contact is foremost important. That has to be the common foundation amongst those persons concerned. In the case of Japan this visitation/contact in itself might be rather difficult to achieve but this might change little by little. Do you think that there need to be additional efforts in terms of laying down the ground foundation to make this possible?

Yoshiko Aibara
Thank you. Maybe I might simply say yes to that question. But based on my personal experience regarding visitation and access, to be very frank, the solicitor representing the other party and between ourselves representing our party if there is a common sense of value, if there is a will to think about the interest of the child then the solicitor will have to convince the respective clients. In that case it could be a successful visitation. If I represent the mother then I will convince the importance to the mother about the importance of visitation. To my counterparty, to the lawyer representing the father, the mother's concern will be explained. Between the lawyers if you can coordinate asking the father not to do what is difficulty for the mother. In that way both lawyers can convince his or her respective clients. In that case that would enable smooth visitation based on my experience.

Today we spoke about mediation. What are the issues that you would like to convince the other party to think about? If that convincing is successful then visitation can be realized. But again, sense of value is critical to permit visitation, to permit access and the importance if there is a common understanding that would be fine.

As was discussed earlier, more than 20 years ago I was admitted to the bar. In comparison to 20 years ago at the Family Court of Japan there is rising awareness about the importance of access by the non-custodian parent however that is not sufficient. After convincing the mother, the mother still is frustrated and distressed. Then by theory, mother might understand however, she may not be verbal but her expression might be stressful which in turn would be a stress on the child with the mother. Therefore, if some support could be provided to that stressed mother even she is convinced.

In the case of cross border dispute regarding the discussion about the Hague there is a pilot program under the Ministry of Foreign Affairs. For 3 months there was a telephone based information provision as a pilot program, the taking parent, mother called the telephone. In the event of visitation the mother is fearful that the child will be taken away because she did exactly that. Therefore, when the child meets the father, the mother is fearful that the father would remove the child. This applies in Japan as well. In the setting of visitation and access the child may be taken away is the concern of the mother who was the original taking parent. If there is a guarantee that that would not happen that there would no re-abduction by the other party, if some guarantee is possible that would be important. There psychological support is required, plus a re-abduction by the original pursuing parent, if that could be avoided. Thank you.

Mikiko Otani
Thank you very much. I want to ask the following two questions to Mr. Suzuki. The first question is that we have been emphasizing contact meaning visitation and contact. If it's

going to be a cross border contact so that the left behind parent, the parent who does not live with the child may visit the country of current residence of the child to achieve visitation. But if the child can go and visit the country of the left behind parent to have visitation, there are many cases where the latter is more desirable.

Mr. Suzuki, you have referred to the pilot case in which the children were to visit the father in the United Kingdom. The mother is worried that the children will be retained in the United Kingdom and they will not be returned to Japan but it was not a court decision but it was being realized as mediation. But in the future the parent not just coming to Japan to achieve visitation but for the child to go to the left behind parent's country, is no worry that the child be retained thereof. Is there some guarantee order from the court to secure the return of the child? In that case, will cross border attorneys' network or the court network amongst the countries that become necessary to assure that the child be returned. That is the first question.

Now, moving on to second question that is a language issue. In the pilot mediation case, English language was used. The Japanese parent, did she give consent with regard to the use of the English language? How would we be able to resolve this question of languages in the future cases?

Isomi Suzuki
When the child is visiting the other country how can we secure the return of the child to have binding force to the mediation agreement just as the court decision. Listening to the explanation on Germany, mediation is being conducted at the same time as the court nearby. Once mediation agreement is reached it will be incorporated into the court decision. If that can be done also here in Japan that will be highly appreciated.

But the problem is that in that case drawing from the previous example, what should be embraced in terms of the court verdict it should not be the Japanese court but the UK court. If the mediation is conducted in Japan even if the Japanese court embraces that if we look at the practical situation, it has to be adopted in the UK court. For a Japanese court decision to be applied immediately in the UK court, if we can come up with such a mechanism that will be wonderful but I have to ask Ms. Otani about this. If there is a mirror order simultaneously in two country's courts, if those decisions can be adopted as mirror decisions that will be wonderful. But, in terms of the time and in terms of the manpower required whether this is functional or not I am not sure. We did not have the time in the case of the pilot mediation case. It could not be done in terms of the cost. There is some degree of trust relationship between the two parents.

The second question you raised with regard to the interpreters of the language, there were three reasons why we adopted English language as the principal language. First, because the father did not speak Japanese language. Second, the mother tongue of the mother was Japanese but the marriage life was conducted many years in UK and therefore the language that was spoken between them was English. In the marriage life communication was being conducted in English and therefore we felt that the mediation could be conducted in English language as well. The third reason is that the mother herself said that she does not mind mediation taking place in English language. She gave her consent. Having said that however, what actually took place was at the time of the screening stage, we had direct consultations with the parties concerned, with the mother. She had a lot of tension in having to have communication in English.

For instance, whether she would give consent for her to send her children to the United Kingdom, that question is thrown at her from the UK side but this question was raised by the UK mediator representing the father. Therefore, she would reject responding to this question. At the time of the staging what I said then in Japanese was this is all only communication from the UK mediator. The mother can make her own decision on whether to agree or not. I

explained that to her in Japanese language and this helped to relieve her tension and she was able to respond.

There were many scenes as such. In the mediation I suggested that we shall have an interpreter to ease this tension of the mother. By the presence of the interpreter the mother was able to express her emotions freely. With regard to the presence of the interpreter, as far as I am concerned, I benefited greatly because serving as the mediator between the two, if I have to serve as interpreter at the same time, on top of being a mediator that's quite burdensome for me personally. With the presence of the interpreter that relieved me of this burden but the cost burden is something that has to be considered.

Mikiko Otani
Therefore, this question goes to Mr. Miyajima. Today we have experts from UK and Germany to learn from their experience. We have international experts. Systems have to be made, collaboration co-working with the court and there is the cost, legal aid, could that be utilized or this maybe unique to Japan which might be the linguistic issues. Of course, this happens in other cross border disputes but in the case of Japan translators, interpreters are expected to be required in lot of Hague cases.

For example, the mediator members they need to be trained, they have to have technical expertise then there is a higher credibility if they are trained and if they do have technical expertise. Therefore, regarding training of the mediators or the fee or the compensation that the mediators receive themselves, all that means more cost for successful mediation. In terms of cost and expense, how to make the system and the institution, what is the position of the Japanese Ministry of Foreign Affairs or if there are any plans to consider in the future, Mr. Miyajima?

Akio Miyajima
Thank you. That is a very important matter, I understand, as I listen to the discussion. Having said that it's a very difficult question. I will be careful in trying to respond. Before directly responding just for confirmation, let me explain, Article 7(2)(c) of the Hague Convention; the Central Authority will have to ensure the voluntary return or promote effective return and amicable resolution of the issues. Therefore, through any intermediary, it says either directly or through any intermediary, that is what Article 7 says. If amicable resolution is to be derived at or in order to ensure voluntary return we, the Ministry of Foreign Affairs is prepared to do the efforts but that does not mean that the Central Authority itself does all the activities. According to the practices of different countries, different states have different circumstances and therefore sometimes the Central Authority acts directly or it goes through other organizations by way of an intermediary as Article 7 says.

In the case of Japan we are not concluding yet. In order to conclude and join the Hague Convention what institution it has to be made is under very serious discussion. Right at the moment, in other countries the Central Authority, if the parent wishes the return of the child, letters could be sent, direct contact between the pursuing parent sometimes takes place according to our research. As I listened to today's discussion, in Japan which organization, institutions are available? There is a lack of such organizations in Japan at the moment. Having said that, I am sure that members here do have similar experiences. Therefore, in order to fulfill the duty of the Central Authority the Ministry of Foreign Affairs has to be frank that we do not have enough experience. Because we do not have the sufficient experience we have to learn from all of you. We have to cooperate with all the parties to make each system one by one.

I am talking too long but at the moment what the Ministry of Foreign Affairs as the Central Authority is considering is as follows. First of all, to the current custodian letters, telephone, electronic mail, will be made so that voluntary return or visitation can be promoted. That will

be encouraged. If there is a wish to consult between the parties themselves then relevant domestic laws and systems shall be advised.

In order to conduct the consultation between the parties, an intermediary as the information provider and a communicator can be provided and organizations who can intermediate will be provided. Referral information provision or intermediation, these are considered that we have to do. In the mediation process or in an ADR there is the Japan Legal Support Center system in Japan. We have the Japan Association of Arbitrators, Japan Federation of Bar Association including all these people, all these systems will have to be provided as Central Authority.

The question was about the cost and expense. This is a government activity and therefore there is budget constraint. Within the constrained budget at least for mediation cases done in Japan which is co-paid it is rather difficult to cover. However, if it becomes a Hague case for interpreters or written translation there will be additional cost because it is cross border, because it is Hague Convention. We are talking with the fiscal authorities. For such additional expenses in some way or another as a duty of the convention something could be done. I cannot make any commitment but at least we are considering about such support in order to fulfill their obligation under the Convention. But because of budget constraint as Mr. Paul of Germany just told us, the travel expense, accommodation expenses, whether the national government can cover everything I think that is going to be quite difficult in Japan. However, in the process of mediation, we wish to demonstrate that we give importance to mediation. We want to demonstrate that we highly regard mediation and therefore we hope to make a system that will be convenient for the parties.

As for the mediators and their training, at the Ministry of Foreign Affairs we may not be in charge of the training but with relevant organizations consultation is taking place. With the Ministry of Justice, with the Japanese courts, there will be careful discussion taking place and that is why this session is very useful for us. We will continue to study. Thank you.

Mikiko Otani
Thank you very much. We would like to raise the questions which have been raised by the audience and have question and answer session. But before doing so, if the members of the panelists want to have supplementary comments vis-à-vis the points which have been raised by the other panelists, if you have any questions you want to ask the other panelists, please go ahead.

Akio Miyajima
I have a point I wish to raise. Mr. Paul or Ms. Fenn, either of you can respond. When we consider mediation, for instance, when that is conveyed to the taking parent or the left behind parent you were mentioning a while ago with regard to the advantages of the mediation. What are the advantages for the taking parent in terms of the option of the mediation? Left behind parent has asked to discover the location of the child and re-conduct the investigation and locate the whereabouts of the child. To the taking parent, would you want to go for the amicable resolution that will be the next step to be taken. How are we to persuade the taking parent to accept this?

For the left behind parent many of them are asking for the return of the child. The Central Authority ends up being sandwiched between the two parents. I have to convince especially the taking parent, what kind of argument should I present to the taking parents? Based on your experience, could you try to respond to this?

Sandra Fenn
From my experience within England over the last 12 years it's not the taking parent if it's the mother that's the taking parent that needs convincing because generally speaking they have nothing to lose. They usually see it as having returned home. Most of them have no idea that

they are breaking laws when they do it. Unable to stay in their home countries because their marriage is broken down, they feel isolated once they are out of the marriage in the foreign jurisdictions. They have already seen their lawyers, they are already awake to the reality that the chances are that when it goes to court those children are going to be ordered to return and that they are facing returning to that jurisdiction with them, to be then faced with more court action on now who gets custody and all the rest of it. They are usually very anxious to mediate on the chance that maybe dad and I am talking as though it's always the mothers but it is largely I am afraid. That maybe dad will say, okay, well, I will work something out with you. If I can have the contact that I want then we will drop the Hague and you don't have to return.

I have very seldom had a mother that wasn't anxious to mediate at least coming through to me on the screen and but a lot of them maybe saying no, right at the beginning. I never hear about those. But it's very often dad says, No, I want the children back. Maybe I will mediate in my own country when the children have returned and then we have a network of lawyers, of mediators that can do that. Does that answer?

Miyuki Sano
Thank you very much. There are questions from the floor. Due to time constraint please kindly understand that not all questions can be covered. First of all, Mr. Paul, Ms. Fenn or to Ms. Hutchinson, maybe these questions will go to our international experts in Hague case. The issues of visitation and access, in addition to that the divorce itself, in Japan the custodian right would be a matter of dispute. Is it possible to mediate covering such areas like divorce or custodian, what is the case in Germany?

Christoph Paul
Thank you for this question. It shows that mediation can offer more, than only the return of the child. Also other issues can be covered. But, there are limitations because of the Hague as we see it in Germany. For example, custody proceedings are banned as long as the Hague case is going on. If you cover these issues within a mediation then it has to be made clear – at least this is the way we in Germany handle it- , that the court proceedings under the Hague are terminated. Then, as a next step you are free to make any settlements can be turned under these conditions into a court order.

Divorce cannot be settled within mediation. Sometimes in mediation the parents for the first time speak about separation and divorce, but mostly they haven't been living separated for a long time. They just started their separation so what they do sometimes within mediation, are the first arrangements how the court proceedings concerning the divorce shall be started and in which country they shall apply for it.

Miyuki Sano
Thank you very much. Ms. Sandra, what do you think about this from the perspective of Reunite besides the visitation and contact, would you handle divorce in terms of mediation?

Sandra Fenn
No, we don't handle divorce. The parents can decide in the mediation, which jurisdiction they want the divorce held but we don't deal with divorce. Neither do we have the time under the Hague to deal with most of the financial aspects. We can deal with who pays for the flights and if there is an agreed amount of child support, but we certainly can't go into disclosures of finances and property within this very limited timeframe.

Miyuki Sano
Thank you very much. There is a question to Ms. Anne-Marie Hutchinson. The case related to Hague, normally it should be processed within 6 weeks or so. Within 6 weeks what process can be covered in reality? What are the matters that the solicitors have to do? How

much time it takes for what procedures, what can be done in 6 weeks? How many Hague cases might be running at one given point in time? What are the countries vis-à-vis UK? Thank you.

Anne-Marie Hutchinson
I will start with the last one. In the UK we have roughly 300 outgoing cases of families taken from the UK and about the same figure each year coming in, children of families brought into the UK.

How can it be done in 6 weeks? That's what the court rules are for. The judges take very strict control of their cases. They will restrict the amount of evidence that can be filed . They will have a timetable. For example, the mother must file a defense in 7 days, the father will answer in 7 days.

We will not have experts on issues. We will have a psychologist or a psychiatrist giving evidence, only very rarely. The judge will run it very tight and because that's the only way to do it in the 6 week period and you have to have a commitment to do it. Again, there will not normally be oral evidence from the parties. Normally, the parties will not give evidence in person to the judge because it's all on paper it is all done on what we call submissions, by submitting the law to the judge for consideration.

Subject to the guiding rules about a speedy process it will take as long as it takes. Some cases are more complicated than others. Some are complicated emotionally and some are very interesting academically. You have cases with disputed issues of law or a difficult issue about rights of custody or a case that has never come before the courts before in this particular form. It will depend. Some cases are very short, sometimes you will take a child from an airport transiting and go to court the next day and that child will be sent home the day after that. It depends on the case precisely how long but the rule is that it must be a speedy controlled court process.

Miyuki Sano
Next question is addressed to Mr. Suzuki, attorney. You talked about virtual mediation. What are the cases which would be conducive to the virtual mediation and which cases do not? Could you describe the cases which are conducive to virtual mediation and cases which are not?

Isomi Suzuki
Well, I have not been involved in many mediation cases, so it's difficult to clarify this. But when both parties share the recognition they want to come to an agreement but when the communications between the two parties is not smooth, for mediators to serve as an intermediary this would facilitate the agreement between the two parties. Sandra, you were the UK mediator. I would also like to invite your comment on this.

Sandra Fenn
I believe that face to face mediation with both parties and both mediators in the same place is by far the best way to do it. But it's not always possible with costs and time. It is far better to use Skype or telephone or mediate in whatever way you can before court or during the court in order to give those parents the chance to decide their children's futures themselves. They are the parents. I would hate to deny any parent the last chance to do that because I am not very keen on doing it by Skype personally. That's my opinion. But let's use Skype let's use all these new technologies that we have got in order to help that family. I think our case that I did with Isomi it was a big learning curve for both of us, but it worked. We got an agreement. The next time hopefully we will get another agreement but maybe the process will be a little smoother. We are all learning, it's all trial and error but if we don't try, we are certainly not going to get there.

Miyuki Sano
Thank you very much. Ms. Aibara and Professor Tanamura, there are related questions. By ratifying Hague what is the impact on the Japanese domestic law? A related question is as follows. In the family mediation in Japan if the abduction of the child is left and the visitation is not permitted then one or two times per month of visitation for 1 or 2 hours could be determined which is difficult for the left behind parent to continue the visit with the child. Under this reality, the prompt return obligated by Hague, could this be realized? Is there a concern that the spirit of the Hague cannot be realized? Would that be a concern about the double standard? What can be done in order to avoid the so-called double standard?

Masayuki Tanamura
Let me start from myself. The Hague Convention is to promote cross border collaboration. The home country is the place where the child ought to be returned promptly. That is the basic objective as for the access should be guaranteed. That is the focus of this framework.

As a member of the global community and in this globalized world there are so many international marriages, international divorces, international break ups where children are taken away or one cannot meet his or her child. When this is becoming so frequent, for Japan to join this framework being a member, becoming a contracting state I think is only natural for Japan as a member of this global community. At the same time, inside Japan of course there are domestic divorces. It is a very serious issue even without going cross border.

Concerning the happiness, welfare, interest of the child should be given top priority. Ms. Aibara has mentioned that the feelings, thought, and the perspective of the child should be considered. The child's welfare should be the focus rather than the fight and dispute between the parents. That is the big trend. In that regard, Hague convention and the domestic issues and the cross border issues are all interconnected. They cannot be considered separately. The legal frameworks are different and the issues are becoming more difficult because of the different legal framework. Therefore, according to this global trend whether it is a Japanese wife and Japanese husband issue and how to resolve the issue for the child again the child should be in the center. It should be a joint responsibility for the child. I think that is similar.

Having said that, in order to enable Japan to follow the Hague procedure there must be more social support. Just changing the law, just making the legal framework does not allow joint custodian or joint parental rights. This will not solve all the issues. By joint working between the two parents, a social support system must be enriched so that consent can be formed. Some social system to support the parent to reach an agreement is required.

If a state joins the Hague convention, should the domestic law be immediately revised in the same way as international law? That is not the case. However, by joining a new convention the domestic law will be reviewed and eventually the Japanese domestic law hopefully would be changed for the better. That positive effect I think can be possible.

As for visitation and access, when there is a high conflict between the two parties it is difficult to realize visitation and access. However, a contact center, an intermediary organization in Germany, in UK and other countries including France are observed according to our studies. There are intermediary organizations. Joint child rearing or visitation access in order to allow that, not only the legal framework but social support systems have to be expanded and enriched.

Therefore, in the case of Japan if there is economic difficulty and mothers are often in economic dire situation and psychological difficulty, such organizations can intermediate in between the father who has lost access. Organizations have to be set up. Of course, it means

cultivating human resources and more expenses but having more social assistance in that way I think can work to improve the current situation.

The 766 of the civil code of Japan discusses about the child care cost and the visitation right. Article 766 is in effect from April of last year. Having said that, again, just because a provision in the law is made, just because it is now included in the divorce certificate that is not enough. Not document, not law but a social support system is required. By having such system then the Hague Convention can impact domestic law in Japan and that would lead to the solution of cross border cases. I think this would be a reciprocal improvement. Whether it's domestic case or cross border cases because they are not separate by mutual positive impact on to both, the welfare of the child should be separate from the dispute of the parents. In order to ensure the welfare of the child the legal system and social system have to be improved. Thank you.

Yoshiko Aibara
Let me add a bit. I would like to share with you my personal opinion. Mr. Tanamura emphasized the interest of the child. Whether it's international marriage or domestic marriage I think the interest of the child will be no different. But, in terms of the structure of the law and once Japan ratifies the Hague Convention, the national legislation here in Japan for a while will apply a kind of a double standard, we cannot deny this. But fundamental approach is that we should prioritize the interest of the child, whether you are the mother or the father. Whether you have the custody or not have the custody. Access and contact rights should be assured. This is written in the UN convention on the rights of the child and this should be assured in the context of the domestic legislation.

Having said that, I am sorry if I am sounding paradoxical but we cannot do this in a single leap overnight. The degree of acceptance of the society, the mother with a young child being a taking parent. Of course, if you are the left behind parent or if the father is the taking parent, the mother is accused that maybe mother is not living up to the responsibility. What can be accepted in terms of the society, we are seeing gradual changes in terms of the values of the society and that is what we must expect to occur. But, in terms of the right of the child even if there is a divorce, the child should be able to have access to both parents, to the father and the mother. Personally speaking, I want to make this appeal to the Japanese society but we may not be able to achieve this overnight, honestly speaking.

Miyuki Sano
Thank you so much. The next question is for Mr. Miyajima of the Ministry of Foreign Affairs; 80% of the international marriages are being conducted in Japan with divorce and separations. The child is being taken by Japanese parents and that is an international problem. Does the Ministry of Foreign Affairs regard this to be a problem as well? The foreign parent may not have the right of custody and does not have visitation contacts rights. This is infringement of the human rights.

Akio Miyajima
The international marriages between Japanese and non-Japanese and the Japanese parent has the right of custody. The Japanese parent is taking away the child to outside Japan? Is that what you are raising your question, I couldn't really understand it?

Masayuki Tanamura
There is a divorce and you are living in Japan and you have a right of single custody. You can't have visitation rights. The whereabouts of the child is not being discovered in Japan. This is within Japan. But, marriage of a couple with different nationalities is an international marriage. It's not under the jurisdiction of the Ministry of Foreign Affairs. I think the case you are raising is not for the foreign ministry.

Akio Miyajima
I think whoever raised the question understands this, but this is not pursued under the Hague Convention. But, with internationalization, there are international marriages and international divorces. There are difficulties pertaining to the handling of the child. But, I think this is a different scope from what the Foreign Ministry is trying to do. You were talking about domestic legislation. From a broader perspective, in the discussion of domestic marriages and divorces in international couples, I think there are many more experts. I would appreciate any supplementary comment from others.

Masayuki Tanamura
As was discussed earlier in that regard for an international national accounts for more than 1% of the residents in Japan. They are citizens of Japan, residing and living in the land of Japan. In that circumstance, if there is a difference in the legal system between the home country and Japan, if they have no access to the child or could not be involved in caring for the child, this issue is rising amongst Japanese nationals and even more serious amongst non-Japanese nationals.

Therefore, the domestic Japanese law of Japan needs to be revised. Stalker, domestic violence are some of the issues that women are suffering from and therefore they are fearful about these because that is why they are fearing about joint custody. Therefore, in terms of the legal system, the parents may divorce but for the child they are still mother and still father.The communication between father and mother,and their bonding have to be protected. That kind of legal system in Japan, I think has to be made but in order to enable that, social assistance systems in addition to the law is necessary. Thank you.

Miyuki Sano
Thank you so much. This is probably the final question that we can deal with. This is addressed to Mr. Paul. You have experience as a trainer of mediators. What are the requirements which must be fulfilled by international mediators?

Christoph Paul
Thank you very much for this question. I wanted to raise it anyway. Mediation is a craft, it's not a miracle, you can learn it. But it's quite a difference between mediation in domestic cases and mediation in these cross border cases. We have heard that there is a strict time limit. You can't postpone it. You can't say well, go home and think it over, talk with your lawyers and come back in 2 weeks time. These cases are full of feelings, full of emotions. The parents are afraid of losing their child, maybe forever. There is anger involved, there is fear involved, there is sorrow involved. You have to know how to handle this. You have to know how to bring the parents to a moment where they can talk about what has happened and then at the next step bring them to the possibility to look in to the future, what kind of relationship they want to create as separated parents and this with a short time. This is something you have to learn, you have to exercise in trainings.

Another aspect is the cultural aspect. Yesterday evening I have been asked, from the Japanese perspective what are the differences between Germany and France, are there any cultural differences? Maybe from the Japanese aspect we are pretty similar or somehow the same but there are huge cultural differences. I think the cultural difference have to be handled. Just, for example, in Germany families play another role than in France where you have huge families, or from a German perspective, to Poland where the Polish grandmothers decide everything. You have to consider this and you have to know how to handle it. You have to use this as a resource in mediation and this is something you have to learn.

Another aspect within mediation in these cases is the fact that they are pretty close to the law. We have already heard it. This starts from the very beginning. The parents must be sure when they enter mediation that whenever it's appropriate they may return to the legal

proceedings. This is something you have to fix in an "agreement to mediate"and at the very end you have to make a memorandum of understanding which fits into the scope of the court proceedings. If you have two legislations involved or sometimes even more legislations involved, you have to be in constant contacts to the lawyers which must be available during mediation. That's something we will practice in the training tomorrow and day after tomorrow. This is something the mediators have to learn how to handle. How to cooperate with other professions, how to cooperate with the lawyers, how to cooperate with the courts if necessary. This is something which requires a profound mediation training.

Miyuki Sano
Thank you very much. These were the questions from the floor. This would be the final comments from the panelists. You have just ended but starting by Mr. Paul please the final concluding remarks.

Christoph Paul
My country –Germany- signed the Hague Convention in 1990 which is probably 20 years ago. We started with the mediation after 10 years. In difference to our way you start with mediation from the very beginning. It took us quite some time to establish a good and working mediation scheme. We learnt a lot from England, we learnt a lot from our practice we were doing. Seeing it now after 10 years of mediation practice in these Hague Convention cases I must say that it's a success story.

Of course, not all cases go to mediation. Not all cases are suitable for mediation, If you ask the judges who are involved they are happy that many cases are referred to mediation and even if the cases don't end up with a settlement, the judges always say when the parents come back to us after having tried out mediation they have tried out to build up their communication again. It's a value just by doing it plus the value that the parents may have come to a final settlement. We have the support from the Central Authority and I think it's great that also here in Japan everybody sits together because that's the way how it works. We have the evaluation done with the parents. They say they are very grateful for having had the chance to try out mediation and work out something in their own responsibility for the children. I hope that when we meet again in 10 years that you may tell us or tell me or tell each other the same about your experience here in Japan. Thank you.

Miyuki Sano
Thank you very much. Ms. Fenn.

Sandra Fenn
I would very much like to echo what Christoph has said. But, the other thing is that when we started thinking about mediation we set up a steering group. We worked on with the judges, with the lawyers, and then we managed to get some funding to do a pilot project. We did 28 cases under that pilot project and then thought what happens after? Because they are going away with these memorandums, they are making them into court orders, are they working because if they are not working in the long run we are wasting our time.

We did another research project to find out from those parents if their agreements had lasted, had held. By and large, the very vast majority had, and the parents were still using them. They still might not like each other very much sometimes but they went back, kept the agreement and it worked. We know that mediation, if it works, if they get to an agreement, is successful. We are not wasting our time doing it. I think that's probably all that I would like to add now.

Miyuki Sano
Thank you very much. Professor Tanamura, please.

Masayuki Tanamura
In today's symposium we were able to learn from the experience and the actual situation in the UK and Germany – United States, Germany and France in such countries they do understand that the international family mediations are being conducted and these countries are quite advanced in this area. In Japan, mediation has existed from the Taishō era. We have a history of 90 years behind us in terms of mediation. But when it comes to international family mediation over custody of children etcetera, we don't have much experience here in Japan in terms of mediation.

We have a great deal to learn in terms of knowhow and skills and human resources development from other countries so that we will be able to reach amicable and voluntary resolution of the problems. This will lead to subsequent enforcement. In terms of cases under the Hague convention, the HCCH Secretariat has come up with data, 19% only 300 some cases have voluntary return of the child. We have to try to emphasize this so that we believe that in terms of human relationship leading to subsequent visitation and contact, if it destroys the relationship between the parents this will not reach amicable results. The Ministry of Foreign Affairs and Federation of Bar Associations and the EDR related institutions should cooperate. We will ask Mr. Suzuki and Ms. Otani also to render collaboration so that we will be able to come up with a good scheme by training expert to international family mediation and improving the skill here in Japan and that's important.

Yoshiko Aibara
There are two points. The first point is regarding child abduction. Hague Convention has a principal role. That is very important to abide by Hague Convention. My personal experience is based on domestic cases. Many years ago there was a highly educated parent who repeated the removal. The boy was little. When the boy was with the father he says he wants to be with the father but he says he wants to be with the mother when he was with the mother. That was the reason of the repeated abduction by one of the two. As a result, after 20 years this boy became psychologically depressed, was damaged and withdrew and did not go out. That is my personal experience. Again, rules have to be established to think about the maximum interest of the child. I still believe that a better system could have done for the welfare of the child. This is a very difficult case that I still cannot squarely face.

Now, the taking parent after all in most of the cases are mothers I said. The abductor is the mother. The mother has taken, removed the child. Even if there must be convincing of the mother, the mother is psychologically damaged even if she understands about the visitation. If the mother is psychologically damaged again, there is an impact on to the child staying with the mother as well. That is why support is required, a psychological support must be provided to mitigate. If the child visits the father it must be in the interest of the child's welfare, it must be in the interest of the child to allow visitation. Thank you.

Miyuki Sano
Mr. Suzuki please.

Isomi Suzuki
I have been following the mediation for a while. Mediation can be established only through the agreement of the parties and for everybody to become happy that is the premise. But what is supporting the mediation is a prediction that court will come in and what kind of court decision will be reached and that will be taken into consideration in reaching agreement at the mediation.

What is actually the court order which the court will be referring to in international scenes? We have several disputes pertaining to children. The court has international framework with regard to how to deal with such disputes over children. Personally speaking, I feel Japan should try to ratify the Hague Convention as promptly as possible and within the framework

of the Hague Convention how these issues can be resolved. Japan should come up with ingenious ideas to come up with a domestic structure to support this. As far as my personal impression is concerned there is a lot of room to come up with a good structure here in Japan and I would like to make the efforts so that I can make my modest contribution.

Miyuki Sano
Mr. Miyajima.

Akio Miyajima
Once, again thank you very much. The systems have to be established. The British and German experience and the pilot cases were introduced. All of them have taught us a great deal.

In particular, mediation is one very effective procedure. At the same time it is very delicate, a very careful delicate handling is required. As was pointed out, the mediators have to have passion. Their dedication, skills and experience are indispensable otherwise mediation would not be successful. The lawyers who represent the clients have to be trained. That again was fully recognized. The Ministry of Foreign Affairs will become the Central Authority but the Ministry alone cannot do everything. The court, the bar associations all relevant organizations' cooperation is absolutely required.

Lastly once again if I may, going forward, the world is globalizing. The Japanese people will enter international marriage, and there were international residents arriving in Japan and non-Japanese to non-Japanese will marry in Japan, which will fail. Japan has to survive as a member of the global community and this is the reality. Based on this reality there is an international rule. Japan staying out for the long term, staying out of international framework is not in the interest of the mother, nor the father, nor the child. It is unfortunate if Japan stays outside of international law.

Twenty years ago Germany joined the Hague Convention and Britain also has their experience. We heard that learning from experiences from other countries including the U.K., Germany started mediation ten years ago and we have the latecomer's advantage. Therefore, for the advanced countries we will learn from the earlier experiences. There is the benefit of the latecomer, not whether we should join or not, how successfully can we join the Hague Convention is our challenge. The interest of the child is the top priority. What can be done for the child's welfare we would like to think together with all of you. There are incoming cases but as you know of course there are outgoing cases which are very serious. Therefore, the big picture should be kept in mind. We must look at the entire circumstance and be fully prepared for conclusion. Thank you very much.

Miyuki Sano
Thank you so much. With this we would like to conclude our panel discussion. I would like to thank the panelists especially those who have traveled a long distance. Please thank them with a very loud applause.

Thank you very much. With this we would like to conclude our panel discussion. Thank you very much for giving us the opportunity to serve as the moderator. I would like to pass the microphone to the moderator of the symposium.

Tatsushi Nishioka
Thank you very much for your participation. With this we would like to conclude today's symposium. Once again, I would like to thank all of the members for participating until the end of the program. To the keynote speakers Ms. Hutchinson, Mr. Suzuki, and the two moderators as well as the panelists, please thank them once again with a very loud applause.

Make sure that you leave behind the receiver set for the simultaneous interpretation service on the tables in front of you. Thank you very much for your participation.

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