

LA MEDIACIÓN EN CASOS DE SUSTRACCIÓN INTERNACIONAL DE MENORES POR UNO DE LOS PROGENITORES Y LOS ACUERDOS VOLUNTARIOS TRANSFRONTERIZOS: EL CASO MEXICANO*

MEDIATION IN CASES OF INTERNATIONAL CHILD ABDUCTION BY ONE OF THE PARENTS AND VOLUNTARY CROSS-BORDER AGREEMENTS: THE MEXICAN CASE

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RESUMEN: El objetivo general de este trabajo es contribuir con algún canal de reflexión a través de una serie de conclusiones que pudieran ser un aporte en un tema siempre pendiente en el derecho internacional privado, nos referimos al reconocimiento y ejecución de acuerdos que tienen una connotación transfronteriza y familiar y que además son voluntarios y que pueden derivar, incluso, de instrumentos de *Soft Law*, como es la Guía de Buenas Prácticas. Razones que buscan, en definitiva, evitar en los niños daños irreparables derivados del conflicto familiar internacional y que se pudieran paliar, si no desactivar, a través de la consecución de acuerdos voluntarios transfronterizos reconocidos y ejecutados en las diversas jurisdicciones involucradas.

Palabras clave: mediación, sustracción internacional parental de menores, reconocimiento y ejecución, acuerdos voluntarios transfronterizos.

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ABSTRACT: The general goal of the present article is to provide a way of reasoning through a series of conclusions that may contribute to foster a frequently overlooked topic in Private International Law, we refer to the acknowledgement and enforcement of voluntary cross-border family agreements that may as well result in the creation of Soft Law instruments, such as the Guidelines for good practice in mediation. These are definitely enough reasons to try to spare children from irreversible damage arising from international family conflicts that could be mitigated—if not altogether deactivated—through cross-border voluntary agreements, acknowledged and enforced in all jurisdictions involved.

Keywords: *Mediation, International Parental Child Abduction, Recognition and Enforcement, Voluntary Cross-Border Agreements.*

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SUMMARY: I. *Preliminary note.* II. *Voluntary cross-border agreements in The Hague Conventions.* III. *Co-operation and central authorities' role.* IV. *Guide to Good Practice on Mediation.* V. *Mexican Case: some questions and answers for the Experts' Group on Recognition and Enforcement of Voluntary Cross-Border Agreements in International Child Disputes.* VI. *Conclusions.* VII. *Annex: Link Mexican Mediation Law.*

I. PRELIMINARY NOTE

The Idea of this contribution, arose from a request by the Permanent Bureau of the Hague Conference on Private International Law to participate in an Experts' Group on Recognition and Enforcement of Voluntary Cross-Border Agreements in International Child Disputes, and in our case in particular, to address the situation Mexico is going through. Doubtlessly, the fact of proposing an analysis on the subject, makes it clear, once again, that there is a need for insight while searching for solutions to a most current and not less complex topic.

With this contribution we intend to draw attention towards the need to address this topics, and to this end we have structured this article in a first section that provides the reader a background about the dispositions that different Hague Conventions on Private International Law have established regarding mediation and amicable resolutions. Emphasis is placed on the advantages and challenges of the 1980 Hague Convention on civil aspects of international child abduction (henceforth The 1980 Hague Convention). Further the topic of cooperation is introduced as it is the banner held at the most recent Hague Conventions, and plays a key role in the 1980 Hague Convention, by outlining the role of Central Authorities as cooperators. Next, we have focused on the contents of the only Guide of Good Practices that the Hague Conference on Private International Law has ever drafted on the subject of mediation and minors, as an instrument to update The 1980 Hague Convention. The article ends with a section where a number of questions are raised, most of them arise from proposals by The Hague Conference on PIL, for the aforementioned experts group, as well as the answers that the author offers individually.

Having reached this point, it is of paramount importance to highlight that given the evident crisis faced by family as an institution, the increase of divorces and thereby the increase of —international— family conflicts

involving children, we must relentlessly strive for seeking the children's best interest, which may be realized, given the topic at hand, through the right of the child to maintain personal relations and direct contact with his parents and, of course, with his extended family.

For all these reasons, the general goal pursued from the outset of the present article is to provide a way of reasoning through a series of conclusions that may contribute to foster a frequently overlooked topic in Private International Law, we refer to the acknowledgement and enforcement of voluntary cross-border family agreements that may as well result in the creation of Soft Law instruments, such as the Guidelines for good practice in mediation.

These are definitely enough reasons to try to spare children from irreversible damage arising from international family conflicts that could be mitigated—if not altogether deactivated—through cross-border voluntary agreements, acknowledged and enforced in all jurisdictions involved.

II. VOLUNTARY CROSS-BORDER AGREEMENTS IN THE HAGUE CONVENTIONS

The dynamics of international relations, whether family, civil, commercial or criminal, converge on the inertia or need to encompass the knowledge, dissemination and implementation of international regulations, particularly if it is part of an internal legal system of a given country.

Therefore, mediation holds an important place in highly prestigious and important international treaties or agreements. Thus, if we confine ourselves to family matters, Article 31 of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility states that:

The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to:

a) ...

b) facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies...

Likewise, article 6 (2) d) of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance mandates that Central Authorities: “encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes”.

In the European Union, Article 55 of the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 contains the following similar provision:¹

The central authorities shall, upon request from a central authority of another Member State or from a holder of parental responsibility, cooperate on specific cases to achieve the purposes of this Regulation. To this end, they shall, acting directly or through public authorities or other bodies, take all appropriate steps in accordance with the law of that Member State in matters of personal data protection to... facilitate agreement between holders of parental responsibility through mediation or other means, and facilitate cross-border cooperation to this end.

Mexico has not signed or ratified any of the three universal or regional conventions. Nonetheless, it is part of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. Articles 7 and 10 of this convention stipulate the voluntary return or an amicable resolution while posing the use of alternative dispute resolution mechanisms, which includes mediation:²

Article 7: Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve other objects of this Convention.

¹ Vigers, Sarah, “Note on the Development of Mediation, Conciliation and Similar Means to Facilitate Agreed Solutions in Transfrontier Family Disputes Concerning Children Especially in the Context of the Hague Convention of 1980”, Preliminary Document N. 5 of October 2006, Bureau Permanent, p. 13. <http://www.hcch.net under Child Abduction Section>

² www.hcch.net under the section entitled Conventions.

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

...

c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

...

Article 10: The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

This truly a good way of promoting voluntary and amicable resolutions while alluding to mediation; in fact, the work of the Hague Conference on voluntary agreements has focused on achieving such agreements through the dispute resolution process of mediation.³

Focusing on the latter, that is the 1980 Hague Convention, which the only one of the aforementioned signed and ratified by Mexico, it is worth noting that it always refers expressly to voluntary return, but when stressing the need to resort to all appropriate measures, a space is now open for alternative controversy resolution methods such as mediation.

However, a distinction must be made between a voluntary return agreement, and related voluntary agreements. On one hand we have the pursuit —preferably at the earlier stages of the return request—⁴ of a

³ We would like to use this opportunity to emphasize that it is truly important to differentiate between mediation and a voluntary return or amicable resolution. In the specific case presented here on international parental abduction of minors, the mechanism of voluntary return is considered the core or basis of the 1980 Hague Convention. However, it is not the only or the main solution offered by this Convention, thus stressing the role of mediation as an alternative means of dispute resolution.

⁴ At his very early stage, where appropriate services for child abduction cases are available, mediation should already be suggested. “The fact, a better scenario is when receiving a return application, the Central Authority in the requested State should facilitate the provision of information on mediation services appropriate for cross-border child abduction cases within the scope of the 1980 Hague Convention and, one more scenario, the best is the possibility...States are encouraged to include in the training of Central Authority staff general information on mediation and similar processes as well as specific information on available mediation and similar services in international child abduction cases” Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Hague Conference on Private Interna-

voluntary agreement for the return of the child,⁵ and on the other hand, the pursuit of voluntary agreements related to a an international family conflict which may include contact, visits, child support, education, religion, etc. Both agreements, return and related agreements, may be reached through the participation of the many interlocutors involved through informal negotiation and non-confrontational formal processes, such as conciliation and mediation among others.⁶

However, even in the best case scenario, when a voluntary family cross-border agreement is reached, the handicap becomes establishing competency, applicable law, and the recognition and enforcement of voluntary agreements abroad.

Regarding competency and applicable law in related subjects, these could be consolidated in a “package” containing custody, contact, property and other topics directly related to children.

Related to the topic above, we have that habitual residence is a widely used “connecting factor” in private international law. Hence the change of the child’s habitual residence from one country to another following the implementation of a parental agreement may affect jurisdiction and applicable law regarding custody and contact, and may thus affect the legal evaluation of the parties’ rights and duties.⁷

tional Law, 2012, pp. 42 and 43. <http://www.hcch.net> under child abduction section (hereinafter Guide).

⁵ The 1980 Hague Convention seeks to ensure the child’s prompt return to the State of his/her habitual residence, that is:

1. Rule: the immediate restitution of the child to his/her last habitual residence and to restore the *status quo ante* the abduction as quickly as possible to lessen the harmful effects of the wrongful removal or retention for the child, in his/her Best Interest.

2. Exception: No restitution (articles 12, 13 and 20 the 1980 Hague Convention).

⁶ “Three forms of assisted dispute resolution are common in family matters: informal negotiations; the court process; and formal non-adversarial processes... [1] *Informal negotiations*... In the Convention context this is akin to the procedure in many States for seeking voluntary return or amicable resolution [with an important Authority role]... [2] *court process*... these negotiations are usually led by judges or lawyers and are also common in Convention cases, often leading to consent orders... [3] *Formal non-adversarial processes*... The most usual processes in family matters are mediation, conciliation and more recently, collaborative law”. In this text mediation is only used to refer to a particular process practised by persons qualified as mediators. Vigers, Sarah, *Mediating International Child Abduction Cases. The Hague Convention*, UK, Hart Publishing, 2011, 11-12.

⁷ Guide, p. 27.

Promoting voluntary agreements and facilitating mediation related to custody and visiting matters may help prevent an abduction later on.⁸

Regarding recognition and enforceability; these are some of the main concerns related to any decisions made under the 1980 Hague Convention and problems have developed in Convention cases where orders made in one State have not been enforced in the other State. For mediation to have a positive effect on Hague Convention applications it is vital that agreements reached are capable of being enforced in both States.⁹

We take the opportunity to highlight the need to offer assistance in order to help mediation agreements become binding within the juridical systems involved.

Co-operation among administrative/judicial authorities may be needed to help facilitate the enforceability of the agreement in all the States concerned.¹⁰

Thus, assistance through cooperation of Central Authorities —and the role of the judges— may be needed to facilitate the enforceability of the agreement in all states involved.¹¹

⁸ Guía de Buenas Prácticas. Tercera Parte. Medidas de Prevención, p. XIII; www.hcch.net under the child abduction section (hereinafter Guía Prevención)

⁹ Vigers, Sarah, “Note on the Development of Mediation, Conciliation and Similar Means to Facilitate Agreed Solutions in Transfrontier Family Disputes Concerning Children Especially in the Context of the Hague Convention of 1980”, Preliminary Document N. 5 of October 2006, Bureau Permanent, p. 13; www.hcch.net under abduction section.

¹⁰ Guide, p. 79.

¹¹ Guide, p. 79. About this specific topic we are currently working in the Hague in a group denominated Experts’ Group on Recognition and Enforcement of Voluntary Cross-Border Agreements, where, the first work sessions started on December 12-14 2013 at the site of the Permanent Bureau of the Hague Conference on PIL, at the Hague, Netherlands, from which 13 Conclusions and Recommendations were obtained to be submitted to the Council of the Hague Conference on Private International Law on April 8-10, 2014. As result, the Council welcomed the initial report of the Experts’ Group meeting —see Prel. Doc. No 5 of March 2014— (“25. The Experts’ Group concluded that there was a need for those concerned to be provided with a non-binding “navigation tool” to assist them in securing cross-border recognition and enforcement of “package agreements” within the existing legal framework, and noted the additional benefit of a binding instrument to provide recognition and enforcement of the complete “package” as a “one-stop shop”; and more specifically, this Experts’ Group proposed R&C “11. The Experts’ Group recognised the need for those concerned, including parents, mediators, lawyers and judges, to be provided with a “navigation tool”) and focused on the next steps that should be undertaken by the Permanent Bureau in relation to the Experts’ Group. In an attempt

Family mobility requires that such voluntary agreements be “mobile” as well, which implies the recognition and enforceability in the States that will be travelled into; the lack of predictability is opposed to or against voluntary cross-border agreements.

As an example we have that the dispositions for mutual recognition (and previous recognition) and the enforcement of orders related to custody or visit rights are an important part of the legal settings that prevent abductions.¹² Co-operation among administrative/judicial authorities may be needed to help facilitate the enforceability of the agreement in all the States concerned.¹³

III. CO-OPERATION AND CENTRAL AUTHORITIES’ ROLE

Starting from the premise that most current Conventions under the Hague Conference of Private International Law entail specific forms of cooperation and this is the case in The 1980 Hague Convention.

Given the situation exposed earlier, all efforts must be aimed at *prevention* through the search of mechanisms conducive to the detection and deterrence of international child abduction by one of their parents, and thereby prevent its dreadful effects on minors.

To this end, complementary Hard Law and Soft Law techniques become fundamental tools.

Definitely, the 1980 Hague Convention is actually specialized in the subject (Hard Law) but has some important missing links that prevents it from being well and actually applied in practice. Those shortcomings

to obtain more information on the role of existing Family Law Conventions prior to a next meeting, the Council (see Conclusions and Recommendations, para. 5) “invited the Permanent Bureau to circulate a questionnaire and to convene another meeting of the Experts’ Group to consider further the role that existing Hague Family Law Conventions play in cross-border recognition and enforcement of agreements in international child disputes, as well as the impact that an additional instrument might have on the practical use and “portability” of these agreements across borders”. With regard to the composition of the Experts’ Group, the Council “invited the Permanent Bureau to expand the composition of the Experts’ Group so as to include more judges and practitioners”. The Permanent Bureau will report to Council in 2015.

¹² Guía Prevención p. XIV.

¹³ Guide p. 79.

could be overcome through the Guide of good practice on Mediation arising from the Hague Conference on PIL (soft law)

Cooperation and the role of Central Authorities are fundamental to this conjunction of efforts. Entrusted with a return application, Central Authorities under the 1980 Hague Convention will, as soon as the whereabouts of the child are known, generally try to bring about a voluntary return of the child (articule 7,2,c) and 10).¹⁴

Given the prompt response required in abduction cases, Mediation services offered under the 1980 Hague convention must comply with:

1. Information of mediation services available coordinated by Central Authorities.
2. Notification of mediation session schedules on short notice.
3. This information could be supplied through Central Authorities which in turn could designate contact points for International Family Mediation.

The sixth meeting of the Special Commission for the Practical Application of the 1980 Hague Convention, Part I June 2011, within its recommendations and conclusions, established this possibility.

61. The Special Commission notes the efforts already being made in certain States to establish a Central Contact Point in accordance with the Principles. States are encouraged to consider the establishment of such a Central Contact Point or the designation of their Central Authority as a Central Contact Point. The contact details of Central Contact Points are available on the Hague Conference website.

The establishment of such Central Contact Points is a praiseworthy initiative for efficiency, because in addition it considers the possibility to create international family mediator lists, specialized in the subject of international parental child abduction who would create the right framework for good and effective mediation practice, from prevention stages to voluntary agreement stages about abductions that already have taken place.

¹⁴ Guide, pp. 42 and 43.

This collaboration and coordination effort, containing the key element of prevention can be perceived through:

- Cooperation —based on trust— among various juridical operators and authorities within a jurisdiction as well as in different jurisdictions, hence the significant role of the aforementioned Central Contact Points;
- The creation of new binational success stories (such as MiKK,¹⁵ Reunite)¹⁶ or a Binational Mediation Center Mexico-USA,¹⁷ to continue working for children, since they are the “victims of another war”, the war among their parents.

IV. GUIDE TO GOOD PRACTICE ON MEDIATION¹⁸

International child abduction by one of the parents has been addressed in a variety of international forums and now, due to its recent occurrence, it is pertinent to focus on the work conducted at the Hague

¹⁵ MiKK (Mediation bei internationalen Kindschaftskonflikten). MiKK, acronym in German for “Mediation in International Conflicts involving Parents and Children”. See <http://www.mikk-ev.de/english/englishch/>

First in 2002, the german organization BAFM, acronym for “Federal Association for Family Mediation” started a project named “Mediation in International Disputes Involving Parents and Children” to resolve international conflict involving parents and children in connection with the procedure under the 1980 Hague Convention and the Brussels II bis regulation from November 27, 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation EC N. 1347/2000). Later, in 2007 the german organization BM acronym for “Federal Mediation Association”, started to work on the BAFM project. Finally in 2008, both organizations founded MiKK as an independent non government organization, to further their efforts in the same direction. Wright, Walter A., “International Peacemakers. Mediating Cross-Border Child Custody Disputes in Europe: MiKK Blazes the Trail”, *The Texas Mediator*, pp. 15 y 16.

¹⁶ Reunite, International Child Abduction Centre in United Kingdom www.reunite.org

¹⁷ We propose the establishment of a Binational Center Mexico-USA having verified that 10% of all International Parental Child abductions worldwide occurs between the US and Mexico. The figures related to this can be found, among other sources in Lowe, Nigel et al, Statistical Analysis of Applications, <http://www.ncmec.org>, pp. 13 and subsequent.

¹⁸ See González Martín, Nuria, “International Parental Child Abduction and Mediation”, *Anuario Mexicano de Derecho Internacional*, vol. XV, 2015.

Conference on Private International Law,¹⁹ and the agenda of the Sixth Meeting²⁰ of its Special Commission of June 2011 and January 2012,²¹ for the practical operation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction and *The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*.²²

¹⁹ See in connection with the Hague's Conference of Private International Law, all instruments related to Hard Law and Soft Law. N. González Martín, *Compatibilidad de las convenciones interamericanas y universales en materia de familia y niñez: evolución y análisis*, (Washington, OEA, 2011).

²⁰ Previous meetings were held: First meeting of the special commission, October 1989; Second meeting on January 18-21 1993; Third meeting March 17-21 1997; Fourth, March 22-28 2001; Special Commission September-October 2002. Fifth October 30-November 9 2006. The sixth meeting took place in two different dates: June 1-10, 2011 and January 25-31, 2012 with 92 R&C; www.hcch.net under "Child Abduction Section".

²¹ This way, emphasis is placed on the most specific, current and demanding issues related to putting into practice both of the conventions revise during the sixth meeting of the special commission (Part I: June 2011-Part II: January 2012), i.e. both the 1980 and the 1996 Hague Conventions. Under such premises debate took place on the following topics (Part I): 1. *Cooperation among central authorities designated for the 1980 Hague Convention*; 2. *Processing of restitution claims made by Central Authorities*; 3. *The role played by Central Authorities regarding the 1996 Hague Convention*. 4. *Training and fraternization of Central Authorities for the 1980 and 1996 Hague Conventions* 5. Meetings and On line collaboration of Central Authorities of the 1980 and 1996 Hague Conventions(*use of Information Technologies*); 6. Claims for visit/contact filed under the 1980 and 1996 Hague Conventions 7. *Allegations of domestic violence and restitution procedures*; 8. Issues concerning Access to justice and fair treatment; 9. *Discussion about the related jurisprudence regarding the 1980 Hague*; 10. The child's voice/*opinion in the restitution process and other procedures*. 11. *Use of the Guides to Good Practice of the 1980 Hague Convention, Part III dedicated to Prevention Measures and Part IV dedicated to Execution*.12 *Consideration of a Practical Draft for the 1996 Hague Convention*. 13. *Judicial network, and direct judicial communications*. 14. *Consideration of the Draft for a Guide to Good Mediation Practices related to the 1980 Hague Convention*; 15. *Mediation principles developed within the context of the Malta Process*; 16. *Protocol*. In this respect, a chronicle can be found in: González Martín, Nuria, "Relatoría de la Sexta reunión de la Comisión Especial sobre el funcionamiento práctico del Convenio de La Haya de 1980 sobre los Aspectos Civiles de la Sustracción Internacional de Menores y del Convenio de La Haya de 1996 relativo a la competencia, ley aplicable, reconocimiento, ejecución y cooperación en materia de responsabilidad parental y de medidas de protección de los niños, La Haya, Holanda, 1-10 junio 2011", *Anuario Mexicano de Derecho Internacional*, vol. XII, 2012.

²² Bear in mind that during the sixth meeting of the Special Commission both the 1980 Hague Convention as well as the 1996 Hague Convention on Parental Responsibility

Most of the last Hague Family Conventions explicitly encourage mediation and similar processes for finding appropriate solutions to cross-border family disputes and, concretely, Soft Law instruments are implemented²³. Several of the Guides to Good Practice drafted to support the effective implementation and operation of the 1980 Hague Child Abduction Convention.

Thus, “mediation in cross-border family disputes in general has been discussed for many years as one of the topics of future work for the Hague Conference”,²⁴ for example:

- In April 2006, the Permanent Bureau of the Hague Conference was mandated by its Member States to “prepare a feasibility study on cross-border mediation in family matters, including the possible development of an instrument on the subject”,²⁵
- In April 2007, the Council decided to invite the Hague Conference Members to: “provide comments, before the end of 2007, on the feasibility study on cross-border mediation in family matters”,²⁶
- In April 2008, the Council: “invited the Permanent Bureau to continue to follow, and keep Members informed of, developments in respect of cross-border mediation in family matters”²⁷ and asked to commence work of: “a Guide to Good Practice on the use of mediation in the context of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction... to be submitted

were analyzed. Due to the subject matter of this text, only a reference will be made to this contribution in aspects related to the first convention, i.e. The 1980 Hague Convention.

²³ González Martín, Nuria, “Private International Law in Latin America: from Hard to Soft Law” (2011) XI *Anuario Mexicano de Derecho Internacional*, pp. 393-405.

²⁴ *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Mediation*. SI, 2012/14.

²⁵ Conclusions of the Special Commission of 3-5 April 2006 on General Affairs and Policy of the Conference. www.hcch.net under “Work in Progress” and “General Affairs”, Recommendation N° 3.

²⁶ Recommendations and Conclusions adopted by the Council on General Affairs and Policy of the Conference (2-4 April 2007) www.hcch.net under “Work in Progress” and “General Affairs”, Recommendation N° 3.

²⁷ Recommendations and Conclusions adopted by the Council on General Affairs and Policy of the Conference (1-3 April 2008) www.hcch.net under “Work in Progress” and “General Affairs”, p. 1.

for consideration at the next meeting of the Special Commission to review the practical implementation of that Convention... in 2011".²⁸

— In March/April 2009, the Council:

reaffirmed its decision taken at the meeting of April 2008 in relation to cross-border mediation in family matters. It approved the proposal of the Permanent Bureau that the Guide to Good Practice for Mediation in the context of the Hague Convention... be submitted for consultation to Members by the beginning of 2010 and then for approval to the Special Commission to review the practical operation of the 1980 Child Abduction Convention... at its next meeting in 2011.²⁹

A draft Guide was circulated to the Contracting States to the 1980 Hague Convention in advance of Part I of the Sixth Meeting of the Special Commission on the practical operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention. The Recommendation No. 58 requested for revisions to the Guide in the light of the discussions of the Special Commission, also taking into account the advice of experts and to circulate a revised version to Members and Contracting States for final consultations. "A revised version of the Guide of Good Practice was circulated to the Hague Conference Members and Contracting States to the 1980 Convention in May 2012 for last comments".³⁰

As mentioned earlier, emphasis was placed on the subject of the promotion of friendly settlements, and thus the promotion of alternative dispute resolution methods³¹ through mediation by means of a currently

²⁸ Recommendations and Conclusions adopted by the Council on General Affairs and Policy of the Conference (1-3 April 2008) www.hcch.net under "Work in Progress" and "General Affairs", p. 1.

²⁹ Recommendations and Conclusions adopted by the Council on General Affairs and Policy of the Conference (31 March-2 April 2009) www.hcch.net under "Work in Progress" and "General Affairs", pp. 1-2.

³⁰ *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Mediation.* SI, 2012/16.

³¹ "Three forms of assisted dispute resolution are common in family matters: informal negotiations; the court process; and formal non-adversarial processes (...) [1] *Informal negotiations*... In the Convention context this is akin to the procedure in many States for seeking voluntary return or amicable resolution [with an important Authority role] (...) [2] *court process*... these negotiations are usually led by judges or lawyers and are also common in

Guide to Good Practice on Mediation,³² invoking as well the usage of articles 7 and 10 of the 1980 Hague Convention,³³ encouraging voluntary or friendly settlements, or settlements through mediation, based upon international cooperation of authorities.

The Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part V Mediation, has the next structure:³⁴

- Chapter 1 offers a general overview of the advantages and the disadvantages or limits of the use of mediation in international family disputes;
- Chapter 2 explores challenges like the close co-operation, bi-lingual, bi-cultural, distance among other;

Convention cases, often leading to consent orders (...) [3] *Formal non-adversarial processes* (...) The most usual processes in family matters are mediation, conciliation and more recently, collaborative law". In this text mediation is only used to refer to a particular process practised by persons qualified as mediators. Vigers, Sarah, *Mediating International Child Abduction Cases. The Hague Convention*, (Hart Publishing, UK, 2011), 11-12.

³² This Guide is the fifth Guide to Good Practice developed to support the practical operation of the 1980 Hague Child Abduction Convention. The four previously published Guides are: *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part I –Central Authority Practice* (Jordan Publishing, 2003); *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part II –Implementing Measures* (Jordan Publishing, 2003); *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part III –Preventive Measures*; *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part IV –Enforcement* (Jordan Publishing, 2010). www.hcch.net under "Child Abduction Section" and "Guides to Good Practice".

³³ We coincide with Sarah Vigers in that it is really important to make a distinction between mediation, voluntary return and amicable resolution (*Article 7 Hague Convention*: "Central Authorities... shall take all appropriate measures... to secure the voluntary *return* of the child or to bring about an amicable resolution of the issues. *Article 10 Hague Convention*: "The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child"). "The return mechanism is generally and correctly considered to be the heart of the Convention regime; however, it is neither the only nor the primary solution offered by the instrument (...) Vigers, Sarah, *Mediating International Child Abduction Cases. The Hague Convention* (Hart Publishing, UK, 2011), p. 13.

³⁴ *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Mediation*. SI, 2012/20.

- Chapter 3 addresses the specialized training for mediation in international child abduction cases;
- Chapters 4-13 establishes the flow of the mediation process in international child abduction cases in a chronological order from questions of access to mediation to the outcome of mediation and its legal effects;
- Chapter 14 is dedicated to the use of mediation to prevent child abductions;
- Chapter 15 is dedicated other processes to bring about agreed solutions and
- Chapter 16 refers special issues regarding the use of mediation in non-Convention cases.

Throughout its structure we can see that there are fundamental topics dealt with in detail, yet there are others that represent challenges and should continue to be studied, particularly those that revolve around certain issues that seem noteworthy at present due to the urgent need to address them, for instance cooperation and recognition/enforcement, conflicts of law, criminal charges, or due to the innovation implied by its implementation such as mediator training, language, cultural differences or geographical distance and the implementation and promotion of Online Dispute Resolution in those cases, not yet addressed expressly.³⁵ The reader is referred to a number of publications in this regard since the topic is of general interest and complex to discuss in this limited space.³⁶

³⁵ Latin American authors have begun to introduce these subjects, see N Rubaja, *Derecho Internacional Privado de Familia. Perspectiva Desde el Ordenamiento Jurídico Argentino*, Buenos Aires, Abeledo Perrot, 2012, 173 and ss.

³⁶ González Martín, Nuria, “International Parental Child Abduction and Mediation”, *Anuario Mexicano de Derecho Internacional*, Vol. XV, 2015, Vigers, Sarah, *Mediating International Child Abduction Cases. The Hague Convention*, UK, Hart Publishing, 2011; Beaumont, Paul R. and McElevy Peter E., *The Hague Convention on International Child Abduction*, UK, Oxford University Press, 1999; McElevy, Peter, “The New Child Abduction Regime in the European Union: Symbiotic Relationship or Forced Partnership?”, *Journal of Private International Law*, UK, Vol. I, No. I, April 2005, McElevy, Peter, “Evaluating the Views of Abducted Children: Trends in Appellate Case-Law”, *Child and Family Law Quarterly*, Vol. 20, No. 2, 2008.

The need to include Alternative Dispute Resolution is addressed by expressing that widely accepted doctrine converges on the need to develop the culture of agreement, a culture of peace, particularly in the field of family relations, aimed at reaching settlements after a separation, where not only a possible abduction situation is foreseen, but the establishment of related agreements needed to make pacts concerning the children without reaching the point where a judge shall decide for the parties involved.

Confronted with a balance represented by weight and counterweight systems, we have mediation which in turn offers pros and cons.

Consequently, some of the advantages of mediation are:

1. It facilitates communication between the parties “in an informal atmosphere and allows the parties to develop their own strategy regarding how to overcome the conflict”.³⁷
2. It is a structured but flexible process.
3. It can be completed more quickly than court cases, that is, less time is wasted.
4. It is consequently, less intrusive because the mediation is private,³⁸ court is not.³⁹
5. It offers more options, that is, not only the return or not of the child, but all related agreements such as the school the child will attend, and others.
6. It empowers the parties to face future conflicts in a more constructive way.
7. It is more likely to lead to a sustainable solution⁴⁰ and for this reason It is in most cases a long lasting solution;

³⁷ *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Mediation.* SI, 2012/21.

³⁸ We are thinking about that the mediation is confidential. The mediator holds any and all information disclosed in the mediation in confidence with a few notable exceptions: threats, child abuse and criminal activity. Overview of International Family Mediation. International Social Service-USA in collaboration with National Association for Community Mediation. www.iss-usa.org (March 25, 2013).

³⁹ http://travel.state.gov/abduction/about/whatsnew/whatsnew_3859.html (march 21, 2013) Mediation. Settling out of court.

⁴⁰ “The range of issues the parties decide to focus on at the beginning of the mediation soon reveals that there are many more questions at stake which must at least be raised and partially—if not completely—solved during the mediation in order to find the basis

8. It can be of assistance at an early stage of a conflict before a possible escalation;
9. It is lower cost;
10. It is cost-effective;
11. It is a mediator's best tool to help parents understand cultural differences in cases international child abduction and
12. Last but not least, it is done in the child's best interest, it can prevent unnecessary relocation of a child in return scenarios, obviously we are thinking about cases involving international parental child abduction too.⁴¹

Moreover, mediation has other advantages over litigation in international parental child abduction cases under the Hague Convention:⁴²

1. Inconsistent and infrequent application of the treaty renders Hague litigation unpredictable, expensive and time consuming.⁴³
2. Mediation has more options (particularly Hague return cases), that is, once an agreement is reached about where the child will reside, parents can agree to custodial details that would be outside the preview of a court under the Hague Convention.⁴⁴

for a sustainable arrangement... In other words, the procedure is not limited to the issues under legal dispute, but rather open to a much wider range of topics the participants need to settle". Paul, C., "An International Mediation: From Child Abduction to Property Distribution", 2009 (3) *American Journal of Family Law*, 167.

⁴¹ http://travel.state.gov/abduction/about/whatsnew/whatsnew_3859.html (March 21, 2013) Mediation. Settling out of court.

⁴² Zawid, J., "Practical and Ethical Implications of Mediating International Child Abduction Cases: A new Frontier for Mediators" (2008) 1 *The University of Miami Inter-American Law Review*, 2, pp. 19-29.

⁴³ For example, in the United States each international child abduction case must be decided by applying the Hague Convention, ICARA, conflicts of law, federal statutes, and a growing list of federal cases that have interpreted the Convention and ICARA.; and the cost of specialists is prohibitive. The mediation can facilitate an expeditious resolution, bring about balance of power and reduce costs.*Ibidem*, pp. 22-23.

⁴⁴ http://travel.state.gov/abduction/about/whatsnew/whatsnew_3859.html (March 21, 2013) Mediation. Settling out of court.

3. Hague cases can lead to a wide range of criminal, civil, and economic penalties that could be avoided or cured by mediation⁴⁵ and
4. Mediation allows the parties to address a broader range of issues than Hague litigation would.⁴⁶

Notwithstanding the aforementioned advantages, not all family conflicts can be solved amicably. Some limitations, disadvantages or drawbacks of mediation are:⁴⁷

1. The nature of the conflict.
2. The specific needs of the parties.
3. The specific circumstances of the case.
4. The inability or unwillingness to meet or listen.
5. The particular legal requirements.
6. The use of mediation as a delaying tactic in Hague return cases⁴⁸ and

⁴⁵ The taking parent can be subject to a wide range of civil, criminal, a financial penalties by the left-behind parent and penalties can extend to thirds parties like grandparents or family lawyers that were “co-conspirators”. “In the U.S., potential claims include civil conspiracy or even charges under the Racketeer Influenced and Corrupt Organizations Act (RICO). Abducting parents can also face potentially devastating immigration consequences”. Zawid, p. 29. About the issue of compensation for the left-behind parent see R Schuz, “How to Compensate the Left-Behind Parent in International Child”, (2012) 23 *Columbia Journal of Gender and Law*, 65-131. Both the left-behind parent as well as the taking parent could benefit from mediation.

⁴⁶ “Mediation is also promising in cases where the abducting parent takes the child back to his or her country of origin (...) because of ‘feelings of isolation’ in the child’s state of habitual residence. Isolation stems from such factors as a lack of family support, language and cultural barriers, or just general homesickness. In a number of these cases, the abducting parent does not necessarily want to relocate permanently or cut off the child from contact with the left-behind parent”. The mediation process can bring about many positive deals related to visit, travels, support, education, etc. Zawid, p. 26. In the same sense see C Paul, “Family Mediation in International Child Custody Conflicts: The Role of the Consulting Attorneys”, (2008) 22 *American Journal of Family Law*, 42.

⁴⁷ *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Mediation*. SI, 2012/23.

⁴⁸ For these reason, in the United States, if a child has been abducted to a country that is a Hague Abductions Convention partner, it is necessary to ask an attorney whether you should proceed with a Hague return application at the same time try mediation.

7. The fact that agreements must be recognized by a court or incorporated into a court order to be legally binding, a topic of paramount importance covered in the section regarding cooperation.

With this overview, it is clear that the benefits of mediation in cases of international child abduction are extraordinary; the advantages far outweigh the disadvantages, the point being, that it needs to be conducted in an ethical manner for it to be an appropriate and effective tool to resolve cases of international child abduction. Several goals need to be pursued:

1. To safeguard the best interest of child;
2. To safeguard the integrity of a mediation process and
3. To safeguard the compromise of the international community although the international organism like The Hague Conference of Private International Law.

A Guide to govern mediations in this field, is likely to become a good way to resolve most problems, especially in cases involving Latin America. Mediation is gaining ground and new resources are becoming available all the time.

V. MEXICAN CASE: SOME QUESTIONS AND ANSWERS FOR THE EXPERTS' GROUP ON RECOGNITION AND ENFORCEMENT OF VOLUNTARY CROSS-BORDER AGREEMENTS IN INTERNATIONAL CHILD DISPUTES

This is a first approximation aimed at answering the questions that were presented to us as part of the preparation for the Experts Group Meeting that took place from December 12 through December 14, 2013, in the Hague, Netherlands, under the auspices of the Permanent Bureau of the Hague Conference of Private International Law. Our answer, given eminently in a personal capacity, was related to the situation prevailing in Mexico.

First of all, we need to highlight that Mexico is a federation organized in 31 states and a Federal District (Mexico City), almost every one of which has legislative sovereignty for a significant number of matters, including family matters.

For practical considerations, we will only refer to the laws that deal with mediation in Mexico City, stressing the sometimes substantial differences between its legislation and that of the rest of Mexico⁴⁹.

Secondly, it is important to note that Mexico is party to the 1980 Hague Convention but is not a party to the 1996 Hague Convention. And it is working to adopt the 2007 Hague Convention.

1. Scope and terminology of a voluntary agreement

Cases. No cases containing those types of agreement were found in the Supreme Court's database.

What constitutes a voluntary agreement (*e. g.*, achieved through mediation, conciliation, negotiation?

Voluntary agreement can be defined as an "...agreement conducted between those who find themselves faced with a conflict of interests, for the purpose of avoiding a trial or putting a rapid end to one already initiated without having to go through all the formalities that would otherwise be needed to end it".⁵⁰

Article 2, Section X of the Alternative Justice Law of the Mexico City High Court of Justice (MCHC), defines mediation as a: "Voluntary procedure by which two or more persons involved in a dispute, which are designated as the parties, seek to and build an acceptable solution to said dispute, with the assistance of an impartial third party called a mediator."

Thus, in the ordinary laws of the Federal District, mediation is upheld in: the Alternative Justice Law of the MCHC; the Mexico City Code of Civil Procedures; the Mexico City Code of Criminal Procedures and the Juvenile Justice Law for the Mexico City.⁵¹

⁴⁹ See Annex 1: Link to the 32 legal bases, about mediation, that comprise the Mexican Republic.

⁵⁰ Rafael de Pina and Rafael de Pina Vara, *Diccionario de Derecho*, Porrúa, Mexico, 21st ed., 1995. p. 178.

⁵¹ See the latest reforms in the *Gaceta Oficial del Distrito Federal* N° 1629 of 19 June 2013. Decree issued by the 6th Legislative Assembly of Mexico City and in *Gaceta Oficial del Distrito Federal* of 8 August 2013, regarding the following provisions: Alternative Justice Law of the Mexico City High Court of Justice, reformed Articles, 2, 9, 14, 15, 18-20, 22-25, 27, 28, 32, 35, 36, 37 Bis, 37 Ter, 38-60; Code of Civil Procedures, reformed Articles 42, 55, 137Bis, 327, 426, 443, 444, 500 and 941. González Martín, Nuria and Navarrete

Likewise, it has effects in matters regarding the Mexico City Civil Code, the Mexico City Registral Law and the Organic Law of the MCHC.⁵²

In Mexico, mediation is a procedure in which the parties have control over the process of dispute resolution; that is, a negotiation assisted by an impartial third party that helps the parties reach constructive communication, which in turn allows them to discuss their interests and needs satisfactorily within the bounds of the law.

Conciliation: Other authors consider this dispute resolution mechanism an “agreement or compromise of parties that, by a waiver, settlement or transaction, make the pending litigation unnecessary or prevent future litigation.”⁵³

Conciliation not only solves litigation, but it also prevents litigation itself. Through this system, the third party external to the controversy assumes an active role that consists of bringing the parties closer and proposing concrete alternatives to resolve their differences by mutual consent.

With this resolution instrument, it is important for the conciliator to be preferably a dispute expert since he should not limit himself to mediating between parties as he also has the obligation to propose specific solutions.

Within the scope of Mexico City jurisdiction, conciliation is regulated in the Mexico City Code of Civil Procedures.

Villarreal, Víctor M., “Comentarios a las reformas de 2013 en materia de mediación en el Distrito Federal”, TSJDF (forthcoming).

⁵² As of the cited reforms published in the *Gaceta Oficial del Distrito Federal* of 19 June 2013 and *Gaceta Oficial del Distrito Federal* of 8 August 2013, the reformed articles of note in these regulations are: the Mexico City Code of Civil Procedures, Articles 287, 3,005, 3,043, 3,044; the Mexico City Registral Law, Articles 49 Bis and 79; and the Organic Law of the Mexico City High Court of Justice, Articles 61, 186 Bis 1, 186 Bis 5. González Martín, Nuria and Navarrete Villarreal, Víctor M., “Comentarios a las reformas de 2013 en materia de mediación en el Distrito Federal”, TSJDF (forthcoming).

⁵³ Couture, Eduardo J., *Vocabulario Jurídico*. Ediciones Depalma, Buenos Aires, 5th reprint, 1993, p. 159.

A. Can a “parenting agreement” be a voluntary agreement and are there any special requirements?

In Mexican Law, parents are able to reach parental agreements. They must establish who is going to hold legal custody of the child. It is also possible to reach a shared legal custody plan. If legal custody is held solely by one of the parents, the other is entitled to visiting rights. The parental agreement must include—but is not limited to—the responsible upbringing of the child, all the measures to assure his or her well-being, education, child support, holiday agreements, property of the child, third party access, clothing, among other issues (Civil Code for the Federal District, Articles 267, 283, 416).

If parents do not reach a parental agreement, then a Family Judge will decide the best way in which a child is to be protected and taken care of (Code of Civil Procedure for the Federal District, Article 416), in the best interest of the child.

B. Is there a requirement as to who drafts the voluntary agreement (e. g., lawyer notary, mediator, parties)?

No. The parties can draft it, or they can seek advice from a lawyer. They can also be assisted by a notary or a mediator.

C. What areas would be included in a voluntary agreement (e. g., return, custody, access, child support, relocation, travel of the child, education, holiday arrangements, property of the child, third party (grandparents) access?)

All of the above mentioned issues.

D. What areas may not be included (e. g., separation agreement)?

Marital status cannot be negotiated by the parties. Marriage and Divorce are *Ordre Publique* issues. Divorce can only be pronounced by a legal authority; that is a Family Judge or an Official from the Civil Registrar (Administrative divorce).

In some cases, the parties may not file for a divorce but rather ask the Judge to let them live separately (Civil Code of the State of Nuevo León, Article 277).

In case of concubines, separation agreements have no immediate legal effects. Rights derived from this *de facto* union can be claimed before a court if the statute of limitation for doing so has not expired

*E. What elements are necessary for formal validity
(e. g., written agreement, particular language, witnesses)?*

In the case of Mexico City's mediated agreements:

For public mediations, Article 35 of the MCHC Alternative Justice Law states that the agreements reached by the parties can adopt the form of written settlement, which must contain the following formalities and requirements:

- I. The place and date;
- II. The name, age, nationality, marital status, profession or occupation, and place of residence of each of the parties;
- III. In the case of corporations, it shall include an appendix with the document that accredits the legal personality of the proxy or legal representative in question;
- IV. The precedents of the dispute between the parties that led them to turn to mediation;
- V. A chapter of the official statements, if the parties so wish;
- VI. A precise description of the obligations to be given, discharged or not discharged as agreed upon by the parties; as well as the place, manner and time in which these are to be fulfilled;
- VII. The signatures or fingerprints, where relevant, of the parties; and
- VIII. The name and signature of the General Director, the acting Mediation Director or Assistant Director or, where relevant, the corresponding Court Officer, that for the record, he or she attests to the conclusion of the agreement, as well as the Centre seal; and
- IX. The registry number or code at the Centre.

The Settlement shall be drawn up, at least, in triplicate; in all events, it should be ensured that regardless of the number of copies, one should be retained by the Centre and each party should receive a copy for his or her records.

In the case of private mediations and according to that set forth in Article 50 of the Alternative Justice Law of the MCHC, the requirements are:

- I. The registry number corresponding to that set forth in Article 44 of this Law;
- II. The place and date;
- III. The private mediator's full name, certification registry number, seal and signature;
- IV. The full name, where relevant, of the external specialist(s) who participated;
- V. The name, age, nationality, marital status, profession or occupation, and place of residence of each of the parties;
- VI. In the case of corporations, it shall include an appendix with the document that accredits the legal personality of the proxy or legal representative in question;
- VII. The precedents of the dispute between the parties that led them to turn to mediation;
- VIII. A chapter of the official statements, if the parties so wish;
- IX. A precise description of the obligations to be given, discharged or not discharged as agreed upon by the parties; as well as the place, manner and time in which these are to be fulfilled;
- X. The signatures or fingerprints, where relevant, of the parties;
- XI. A certification from the private mediator at the end of the document, which shall state that:
 - a) The identity of the parties was verified and that to his or her opinion, said parties are capable of participating in the proceedings;
 - b) He or she counseled the parties regarding the merit, consequences and legal scope of the agreements contained in the settlement, and
 - c) The acts the mediator deems necessary and related to the authorized settlement, especially those corroborating that the obligations imposed by this Law, the Rules and Regulations were fulfilled to the satisfaction of the parties.

In the certification, the private mediator shall expressly indicate the means used to verify the identity of the parties.

For the private mediator to certify the capacity of the parties, it is sufficient for him or her to observe that there are no obvious manifestations of legal incapacity and not been informed that the parti(es) has been declared legally incompetent.

2. *Treatment under Domestic Law*

A. *Short of a court order can it be recognized / enforced by homologation, authentication, notarial act, etc?*

If we are dealing with an agreement not resulting from a Mexico City's mediation process, then it can be recognized by notarial act and therefore enforced. Homologation would be carried out by a judge through a petition made by the parties. The judge would only verify that the agreement is not contrary to Mexican Law. Once the voluntary agreement is transformed into a judicial agreement, it can be enforced.

If it were an agreement reached as a result of a mediation process in Mexico City, there is more certainty regarding recognition and enforcement.

In Mexico City, this aspect issue is clear. Article 38 of the Alternative Justice Law of the MCHC states:

The agreement celebrated between parties with official certification granted by the Area Director of the matter in question, with the formalities stipulated in this law, shall be valid and enforceable according to its terms.

The settlement shall entail its execution for its enforcement via proceedings before the courts. A negative response to its execution on behalf of the jurisdictional body shall be the cause of administrative liability, except when the settlement does not comply with one of the requirements stipulated in Article 35 of this law.

In the case of non-compliance with the agreement in criminal matters, the rights of the affected party shall be protected so as to present the case through the appropriate channels and forms.

The agreements arising from proceedings led by court officers⁵⁴ and private mediators certified by the Court according to the formalities stipulated in this Law, and who are duly registered before the Centre under the terms provided by this Law, the Rules and Regulations, accordingly, shall have the same effect.

If the agreement arising from the proceedings led by the court officer or Court-certified private mediator does not comply with any of the formalities set forth in this Law, and can be remedied, the registry process before the Centre shall be suspended and shall be returned to the court officer or pri-

⁵⁴ In Mexico, these court officers are known as *secretarios actuarios*.

vate mediator; accordingly, to rectify said formalities; otherwise, the registry shall be refused and the corresponding penalty procedures shall be initiated.

By agreement of the parties, the settlements can be entered in the Public Register of Property and of Commerce, according to the corresponding laws.

The binding force of the mediation settlement has been strengthened by recent reforms in the matter of 19 June 2013 and 8 August 2013.

Thus, the new Article 426 of the Mexico City Code of Civil Procedures stipulates that:

There is *res judicata* when the ruling instigates enforceability or when the parties celebrate a settlement arising from the mediation procedure referred to in Alternative Justice Law of the Mexico City High Court of Justice.

By law, the following are deemed enforceable:

...

VII. Settlements arising from the mediation procedure referred to by the Alternative Justice Law of the Mexico City High Court of Justice."

It is clear that the mediation settlement or agreement is *res judicata* and that only an administrative complaint or an *Amparo* trial can be attempted to go against its execution. Both remedies are led down against the rulings of a judge ordering the execution of a settlement, but not against the settlement itself or its contents.

B. Could a voluntary agreement be recognized / enforced through an administrative body?

Yes. Actually mediation agreements in Mexico City are recognized by the Mediation Centre of the High Court (administrative and not judicial body) through certification granted by the Centre or a private mediator registered at the Centre.

In a similar fashion, agreements that have been reached by the parties at the Federal Consumer Protection Office are also recognized by that agency.

There may be other examples, but recognition by an administrative body is valid if the agreement was reached as a result of a procedure that has been followed according to the rules of that entity.

Enforcement is left to the judiciary.

C. Must a court or administrative authority approve/review the voluntary agreement for it to be recognized/enforced in your jurisdiction?

Yes, it must be reviewed because it must not be contrary to Mexican Law and it must be in the best interests of children. A voluntary agreement would be recognized even if it is not incorporated in a judgment. It the agreement protects the best interests of the child and if it is not contrary to Mexican law, it would be recognized /enforced even if it is not under the scope of the 1996 Convention.

D. Could a voluntary agreement be recognized / enforced without any formalities?

If it is an agreement regarding only civil law issues, *stricto sensu* , there is no need to comply with any formalities at all (Article 1832 of the Civil Code for the Federal District); however if it is an agreement that involves Family Law issues, several formalities should be observed. For example, agreements that shall govern relationships between family members after divorce has been pronounced by a judge, must establish who of the divorcees shall hold custody of the children; a detailed scheme by which the parent not holding custody will exert his or her visiting rights; a scheme of economic support for the former spouse,(if he or she needs it) and for the children. Regarding this issue, the agreement must specify the way, place and date in which alimentary obligations shall be met. (Article 267 of the Civil Code for the Federal District).

E. Are there different requirements in general depending on the content of the agreement, such as return, custody, access, child support, relocation, education, property of the child?

Yes.

F. What is the process for obtaining recognition / enforcement of a voluntary agreement?

If we are dealing with an agreement not resulting from a Mexico City's mediation process, then it can be recognized by notarial act and therefore enforced. Homologation would be carried out by a judge through a petition made by the parties. The judge would only verify that the agreement is not contrary to Mexican Law. Once the voluntary agreement is transformed into a judicial agreement, it can be enforced.

3. Treatment in cross-border situations

Under what circumstances is a voluntary agreement from a foreign jurisdiction entitled to recognition/enforcement in your jurisdiction?

A voluntary agreement is recognized /enforced as if it were a foreign judgment. Although, by definition, in a voluntary agreement there is no controversy at stake, by analogy, most rules that apply to foreign judgments will suffice to recognize or enforce an agreement. For example, article 605 of the Code of Civil Procedures for the Federal District, dictates that foreign judgments will be valid and recognized in the whole country, in so far as they are not contrary to overriding public policy interests (Ordre public), according to Mexican legislation and without prejudice to what has been established in International Conventions or Treaties to which Mexico is a Party of.

If your jurisdiction recognizes a voluntary agreement executed in another jurisdiction, what process must be followed for recognition / enforcement and does that process differ from that applied for domestic voluntary agreements? Is there a registration process?

This issue must be analyzed case by case. If it has already been enforced in another jurisdiction and no conflict has arisen and all parties are complying with the agreement, recognition is made through a petition to the Mexican Family Court. The judge will review that the agreement is not contrary to Mexican Law and to the best interests of children involved. If it has already been enforced in another jurisdiction, but some issues must be enforced in Mexico, the Family Judge would seek to enforce it by means of international judicial cooperation. The party searching enforcement in Mexico would ask the judge to homologate the agreement.

A. Will your jurisdiction recognize/enforce a voluntary agreement made in another jurisdiction and which is not (yet) incorporated into a judgment?

Yes. The same argument exerted above is valid to answer this question. However, it must be stressed that even though the agreement has not been yet incorporated into a judgment, the Mexican judge can, by petition of the parties, invest that agreement with the force of *res judicata*, as long as it is not contrary to Mexican law.

B. Will your jurisdiction recognize/enforce a voluntary agreement that has not been transformed into a judgment but involves homologation, authentication, or notarial act, etc?

Yes. Same argument as in last question.

C. If a voluntary agreement executed in another jurisdiction can be given effect, are there practical issues (e.g., time, jurisdiction) in the process?

Yes, it can be given effect as long as it is not contrary to Mexican Law, particularly, Federal Law. The voluntary agreement becomes a public document, with judicial *imprimatur*, it would be equivalent to a judgment.

D. Will your jurisdiction recognize/enforce a voluntary agreement that has been approved/reviewed by an administrative body in another jurisdiction?

Yes, as long as the administrative body is competent according to the laws of that country, and the agreement is not contrary to Mexican Law.

E. Does it matter what other country or other legal system the agreement is from?

There is no general rule for that, it all depends on whether the agreement contains clauses contrary to a public policy interest (*orden público*) or not. For example, there might be countries where a man can be married to two women, and he reaches an agreement with both of them regarding their economic support and that of all the children he has procreated within the two marriages.

In Mexico, this agreement would be null and void because bigamy constitutes a crime.

In the Civil Code for the Federal District, there are conflict of law rules that might be helpful in order to analyze the case at hand (Articles 14 and 15).

4. Process for recognition and enforcement

A. Is the process for recognition / enforcement of a voluntary agreement different from that applicable to a judgment (domestic or foreign)?

It is analogous. Both parties must seek judicial approval of the agreement. Then the agreement is invested with the force of a judgment, which can be enforced.

B. In connection with the process for recognizing / enforcing a voluntary agreement (domestic or foreign), what are the costs and time involved?

According to the Mexican Constitution, justice services are free of charge. Maybe, the only cost involved would be the lawyer's fee. However, if the parties are not able to pay a private lawyer, then the State would appoint a public defender to help them in the process.

The whole process is completed in 30 days, at most.

C. Is a third party guardian or equivalent used during the process?

If the judge deems that the agreement is contrary to the best interests of the child, then he would appoint a guardian, but this is not the general rule for all cases.

D. Is there need for potential limitations on party autonomy or requirements for court or administrative oversight?

The only limitation to party's autonomy would be the protection of the best interests of children, and public policy interests of each nation.

Oversight by the court would be circumscribed to review these issues.

E. Is there any procedural mechanism to require a review of the “best interests of the child”?

Article 1 of the Mexican Constitution provides that in Mexico, all individuals are entitled to enjoy those human rights granted by the Constitution and by International Treaties.

Judges and all official authorities must respect and protect fundamental rights. In case of contradiction between a right granted by the Constitution and another right established by a treaty, authorities ought to choose decide according to the right with the largest scope of protection; that is *pro persona*.

Article 4 of the Constitution specifically protects the rights of children. It provides that in all decisions and actions taken by agents of the Mexican State, the best interests of the children shall be protected. Children's need to nourishment, health, education, recreation and integral development shall be fulfilled. It also establishes that ascendants, tutors and guardians shall be obligated to enforce the aforementioned rights. The State shall provide whatever deemed as necessary to uphold both children's dignity and the enforcement of children's rights. The State shall help out private individuals in enforcing children's rights.

Article 4 and article 1 of the Constitution are complementary in the sense that the latter includes all fundamental children's rights that are spread throughout international instruments.

In this way, all authorities, including judges, are bound by Mexican and International Law that protects the best interests of the children.

Moreover, Family Judges have broad powers to review the best interests of a child at any time. These powers are basically disseminated throughout Civil Codes and Codes of Civil Procedures throughout the country. There is not a particular procedure to guarantee children's rights. Each judicial decision should be made taking in account such rights. Even mediators have the duty to help parties settle taking in consideration the best interests of the children, in particular issues regarding their upbringing (Article 205, Code of Civil Procedures for the Federal District).

F. Is there any requirement for party representation or legal representation?

Lawyers representing the parties must hold a document called *cédula profesional* which is a sort of license to practice Law. This “license” is granted to those people who have concluded satisfactorily their studies in Law. *Cédulas profesionales* should be registered in the Court. A lawyer is required for enforcement, but no necessarily for recognition. A petition for recognition can be filed by any person freely appointed by the parties (in our tradition this person is called *apoderado*).

5. The role of existing private international law instruments

A. Under the 1996 Convention, would a court recognize / enforce a foreign voluntary agreement not incorporated in a judgment and if so, in what circumstances?

Yes, the court would recognize / enforce a foreign voluntary agreement not incorporated in a judgment through homologation and approval by the judge. The judge has to be sure that the agreement is not contrary to Mexican Law or the best interests of the children involved.

B. Under the 1996 Convention, how would a court recognize / enforce a voluntary agreement that includes matters outside the scope of the Convention such as child support?

As argued before, the protection of the best interests of children prevails over any other legal consideration. Family judges must make a systemic interpretation of all legal instruments, whether domestic or international. The court would recognize / enforce the agreement as long as the child is being protected.

C. What role, if any, would the 1980 Convention play in connection with the recognition / enforcement of a voluntary agreement providing for the return or non return of the child, pending an application for return? What issues might be raised under the 1980 Convention, such as jurisdictional (domestic and international) ones?

In most cases, there would be no conflicting issues. If parents voluntarily make a decision regarding the return of the child, the domestic judge would approve that agreement as long as it is not contrary to Mexican Law or the best interests of the child. The domestic judge would notify the foreign judge via the Central Authorities of both countries.

D. What role do existing regional instruments play?

They play a very important role. The problem with regional instruments is that they only apply to States which are part to them. However, Mexican Law recognizes and enforces all voluntary agreements as long as they do not collide with domestic Law and with the Human Rights regime as a whole.

6. Desirability of an international instrument providing for cross border recognition and enforcement of voluntary agreements

A. Is there a need for, and is it desirable, to have an instrument providing for recognition and enforcement of voluntary agreements?

Yes.

B. What do you see as the key practical problems, such as jurisdictional issues, due to the absence of an international instrument?

The existence of different legal traditions.

C. What do you see as the key Legal problems, such as jurisdictional issues, due to the absence of an international instrument?

The existence of different legal traditions.

D. Are there regional instruments that provide sufficient mechanisms for the recognition /enforcement of voluntary agreements?

No, but The European Union could shed some light on this issue. See Directive 2008/52/EC, at: http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/l33251_en.htm

E. What would be the benefits/disadvantages of a new international instrument providing for cross-border recognition and enforcement of voluntary agreements?

We would have a helpful tool that would let us solve cross-border conflicts more quickly and efficiently. Some of the disadvantages would be that it can be a disturbing element that would cause confusion to its operators if they are not well trained.

7. Feasibility of an international Instrument providing for cross-border recognition and enforcement of voluntary agreements

A. Assuming the need for an instrument, what would be the scope of the instrument?

All subject matters relating to Family disputes, exception made of those issues that are compelling public policy interests (*Ordre Public*) on each country.

B. Assuming the need for an instrument, what limitations on party autonomy might be necessary or would there be a requirement for court or administrative oversight?

The only limitation to party's autonomy would be the protection of the best interests of children, and public policy interests of each nation.

Oversight by the court would be circumscribed to review these issues.

C. What impact would the inclusion of different legal systems have in the development / drafting of an instrument (e.g., Sharia)?

There must be consensus regarding the need to protect human rights. This situation may lead to the drafting of a Euro-centred instrument.

8. Conclusions and recommendations for the Council in response to mandate⁵⁵

A. Is an international instrument providing for cross-border recognition and enforcement of voluntary agreements desirable? If so, in what circumstances and why?

Yes it is desirable, as long as all countries represented at the Conference show commitment to be bound by that instrument. It would let us solve family disputes more efficiently.

B. Is there a need for a binding or non binding instrument? If so, what would be its scope?

Binding and its scope would cover all subject matters relating to Family disputes, exception made of those issues that are compelling public policy interests (*ordre public*) on each country.

C. Is the development of an international instrument feasible?

Yes.

VI. CONCLUSIONS

Although in Mexico, generally, mediation agreements reached through public or certified private mediators are enforceable —when a breach occurs— by the action of Mexican national courts, the real prob-

⁵⁵ From the work sessions at the aforementioned meeting in the Hague Conference on Private International Law December, 12-14, 2013, a number of conclusions and recommendations were drawn (see Conclusions and Recommendations, para. 5).

lem remains in practice the recognition and enforcement of the voluntary agreement in an international context.

Most conventions originated at the Hague Conference on Private International Law give rise to cooperation. Co-operation among administrative/judicial authorities may be needed to help facilitate the enforceability of the agreement in all the States concerned or State Party. One of the proposals, as part of the Conclusions and Recommendations of Part II (January 2012) of the Sixth Meeting of the Special Commission to review the practical operation of the 1980 Hague Convention and the 1996 Hague Convention, recommended that further substantive work be done in the specific area “cross-border recognition and enforcement of agreements in international child disputes, possibly in the form of a binding instrument and not tied specifically to the 1980 or 1996 Conventions”.⁵⁶

In this sense, The Hague Conference on Private International Law through its governing Council on General Affairs and Policy, in recognition of the growing use of mediation and other forms of amicable resolution to resolve international child disputes, mandated that an Experts’ Group be established “to carry out further exploratory research on cross-border recognition and enforcement of agreements reached in the course of international child disputes...”. This Experts’ Group must examine and identify the nature and extent of the legal and practical problems, including jurisdictional issues, involving the cross-border recognition and enforcement of these voluntary agreements and to evaluate the benefit of a new instrument, whether binding or non-binding, in this area. Definitely, the goal of the meeting will be to prepare conclusions and recommendations for the Council evaluating the need, desirability, and feasibility of a future instrument.⁵⁷

We are inclined towards the usage of the existing Conventions in the subject (Hard Law), complemented by Soft Law instruments. Nonetheless, we do have in mind other solutions that might be feasible, even though we know that the trend is toward the creation of new specific instruments to

⁵⁶ “Report of the Further Work Recommended by the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention”, Prel. Doc. No 12, March 2012, p. 4. www.hcch.net

⁵⁷ Report of the Further Work Recommended by the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention”, Prel. Doc. No 12, March 2012, www.hcch.net at paras 11-37; 44.

cover and solve such a transcendent and urgent topic⁵⁸, which evidently can be considered reasonable and highlights an idea that is common to all operators who intervene in voluntary cross border agreements related to children: the difficulty in achieving recognition and enforcement of such agreements in the different States involved.

It is true, on one hand, that even when these Hard and Soft Law instruments are present, not enough diffusion, knowledge or the desired level of implementation have been accomplished for these agreements to be efficient, hence, on the other hand, the idea to have projects for new instruments that may resolve these ineffectiveness issues giving rise to the creation of an Experts Group on the subject working on this specific topic under the Permanent Bureau an thereby to the request for approval by the Council to be able to be able to move forward in the creation of a new instrument in this subject. In spite of this and in an attempt to open a more resolutive channel, yet not at all denying the feasibility of a new instrument or the updating of existing ones, we have in mind other solutions that might be feasible. Thus, in the interim, although Mexico, more specifically Mexico City—D. F.—has made progress in the efficiency and the implementation of settlements arising from domestic or national mediation, this same means of conflict resolution when issued abroad should be aligned with the legal systems of each State Party and adopt, maybe, the international custom. One proposal is to designate the mediation agreement as a “transaction agreement”, which makes it possible to refer to this juridical figure, “transaction contract or agreement”, that exists in almost every State Party.

In Mexico, due to a widespread doctrine, mediation agreements share a common nature with transaction contracts “ when the parties mediated, having made mutual concessions, ended a controversy or preempted one, by declaring or recognizing the rights that gave rise to their differences...”⁵⁹

⁵⁸ Report on the Experts' Group meeting on Cross-border Recognition and Enforcement of Agreements in International Child Disputes (from 12 to 14 December 2013) and recommendation for further work" Prel. Doc. No 5 of March 2014 www.hcch.net

⁵⁹ Hernández Tirado, Héctor, “Dos pilares de la justicia alternativa en el Estado de México: mediación y conciliación”, *El poder público del Estado de México*, Colección Mayor, Estado de México: patrimonio de un pueblo, 2010, p. 150.

For the sake of clarity, “the difference between arbitration, conciliation and mediation, is that the latter is not generated within a strictly legal context. As it happens with contracts, the proposal arises from the parties' initiative, and contract law is not a complete

and to enforce them, or to preempt a breach, the aforementioned validity of enforcement through courts.

The constitutional reform of 2008 gave way to the inclusion of México into alternative mechanisms, however, representative doctrine groups have voiced that it was unnecessary to include such reforms at a constitutional level, since the commerce code has already incorporated the UNCITRAL Model Law on Arbitration, and the Civil Code expressly considers the transaction and gives it the same force of *res judicata*, not to mention the fact that excess regulation may lead to unnecessary confusion.⁶⁰

This consideration is valid in any country—subject to whatever the State profile indicates—, however, for “out of court settlements as a result of mediation” or “transaction agreement” as a result of mediation” conduct abroad or issued by a foreign mediator to be effective in Mexico, there are two avenues available:

a) Abide by the rules established in Article 14 of the Federal Civil Code, in terms of being able to turn to the courts and ask the presiding judge to apply the foreign law under the terms of said precept.

b) According to the rules of Domestic Law, preliminary mechanisms for the ratification of the contents and the signing of the settlement can be instigated in an effort to ensure compliance with this Convention through executive channels.

In another context, but under the same idea of making mediation and its conventions functional and feasible, emphasis is placed in the fact that Mexico has to assume its international commitments by using Hard Law or Soft Law mechanisms.

reference for mediation either. Transactions, as a contract law figure, are catalogued as a contract through which the parties, making mutual concessions, either bring a controversy to an end or they prevent a future one. In spite of this, there might be a tendency to consider mediation and transaction as similar”. Figueroa Díaz, Luís, “Sistemas alternos de solución de disputas y acuerdo de mediación”, *Alegatos, Universidad Autónoma Metropolitana*, núm. 55, septiembre-diciembre 2003, pp. 350 y 351.

⁶⁰ Uribarri Carpintero, Gonzalo, “Acceso a la justicia alternativa”, *Ars Iuris*, Universidad Panamericana, No. 45, 2011, p. 256. Ovalle Favela, José, p. 125, in Brena Sesma, Ingrid *et al.*, “La reforma al artículo 17 constitucional. Los medios alternativos, Aspectos sociales, psicológicos y económicos de la queja médica; los medios alternativos en el marco constitucional y la rectoría del sector salud en la calidad de la atención médica”, *Memoria del Simposio*, 2012, México, Conamed, 2012.

Thus, note as an example the recommendation or inclusion in the aforementioned Sixth meeting of the special commission about the practical use of the 1980 and 1996 Hague Conventions, Part I (June 2011, January 2012) regarding the establishment, Recommendation and Conclusion 61, Central Contact Points to locate international family mediators in cases of international parental child abduction by one of the parents: a praiseworthy and pertinent recommendation that generates the need for, on one hand, the creation of such Central Contact Point that depends upon the Mexican Central Authority, Dirección de Familia de la Secretaría de Relaciones Exteriores, and on the other to uphold the single criterion of placing in the list people who are capable and especially qualified in this field of international family mediation.

VII. ANNEX: LINK MEXICAN MEDIATION LAW

The 31 states and a Federal District, and therefore this 32 legal bases that comprise the Mexican Republic are:

Aguascalientes: Ley de Mediación y Conciliación del Estado de Aguascalientes. First Published: 27 de diciembre de 2004. http://info4.juridicas.unam.mx/adprojus/leg/2/17/default.htm?_s=3

Baja California: Ley de Justicia Alternativa para el Estado de Baja California. First published: 19 de octubre de 2007. http://info4.juridicas.unam.mx/adprojus/leg/3/58/default.htm?_s=3

Baja California Sur: There is no specific law, nevertheless there is mediation in the judicial site. <http://www.tribunalbcs.gob.mx/mediacion.htm>

Campeche: Ley de Mediación y Conciliación del Estado de Campeche. First published: 4 de agosto de 2011. <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Campeche/wo65360.pdf>

Chiapas: Ley de Justicia Alternativa del Estado de Chiapas. First published: 18 de marzo de 2009. http://info4.juridicas.unam.mx/adprojus/leg/8/254/default.htm?_s=3

Chihuahua: Ley de Mediación del Estado de Chihuahua. First Published: 7 de junio de 2003; Ley de Justicia Penal Alternativa del Estado de Chihuahua. First Published: 9 de diciembre de 2006. <http://docs.mexico.justia.com/estatales/chihuahua/ley-de-mediacion-del-estado-de-chihuahua.pdf>

Coahuila: Ley de Medios Alternos de Solución de Controversias para el Estado de Coahuila de Zaragoza. First published: 12 de julio de 2005. <http://info4.juridicas.unam.mx/adprojus/leg/6/178/default.htm?s=>

Colima: Ley de Justicia Alternativa del Estado de Colima. First published: 27 de septiembre de 2003. <http://info4.juridicas.unam.mx/adprojus/leg/7/213/default.htm?s=>

Distrito Federal: Ley de Justicia Alternativa del Tribunal Superior de Justicia para el Distrito Federal. First published: 8 de enero de 2008; Ley de Justicia para Adolescentes para el Distrito Federal. First published: 14 de noviembre de 2007; Código de Procedimientos Civiles para el Distrito Federal. First published: 10. de septiembre de 1932; Código de Procedimientos Penales para el Distrito Federal. First published: 29 de agosto de 1931. http://www.poderjudicialdf.gob.mx/es/PJDF/Normatividad_Justicia_alternativa <http://info4.juridicas.unam.mx/adprojus/leg/10/322/default.htm?s=> <http://info4.juridicas.unam.mx/adprojus/leg/10/323/default.htm?s=>

Durango: Ley de Justicia Alternativa del Estado de Durango. First published: 14 de julio de 2005. <http://info4.juridicas.unam.mx/adprojus/leg/11/385/default.htm?s=>

Estado de México: Ley de Mediación, Conciliación y Promoción de la Paz Social para el Estado de México. First published: 22 de diciembre de 2010. <http://info4.juridicas.unam.mx/adprojus/leg/16/606/default.htm?s=>

Guanajuato: Ley de Justicia Alternativa del Estado de Guanajuato. First published: 27 de mayo de 2003. <http://info4.juridicas.unam.mx/adprojus/leg/12/431/default.htm?s=>

Guerrero: There are no regulation regarding mediation.

Hidalgo: Ley de Justicia Alternativa para el Estado de Hidalgo. First published: 21 de abril de 2008. <http://info4.juridicas.unam.mx/adprojus/leg/14/511/default.htm?s=>

Jalisco: Ley de Justicia Alternativa del Estado de Jalisco. First published: 30 de enero de 2007. <http://info4.juridicas.unam.mx/adprojus/leg/15/555/default.htm?s=>

Michoacán: No tiene ley, pero sí un Reglamento del Centro de Mediación y Conciliación del Poder Judicial del estado de Michoacán.

Morelos: Ley de Justicia Alternativa en Materia Penal para el Estado de Morelos. First published: 18 de agosto de 2008. <http://info4.juridicas.unam.mx/adprojus/leg/18/691/default.htm?s=>

Nayarit: Ley de Justicia Alternativa para el Estado de Nayarit. First published: 23 de abril de 2011. <http://info4.juridicas.unam.mx/adprojus/leg/19/732/default.htm?i=1>

Nuevo León: Ley de Métodos Alternos para la Solución de Conflictos del Estado de Nuevo León. First published: 14 de enero de 2005. <http://info4.juridicas.unam.mx/adprojus/leg/20/775/default.htm?i=1>

Oaxaca: Ley de Mediación para el Estado de Oaxaca. First published: 12 de abril de 2004. <http://info4.juridicas.unam.mx/adprojus/leg/21/813/default.htm?i=1>

Puebla: Código de Procedimientos Civiles para el Estado Libre y Soberano de Puebla. First published: 9 de agosto de 2004. <http://info4.juridicas.unam.mx/adprojus/leg/22/843/default.htm?i=1>

Querétaro: There is no specific law, nevertheless there is a Statute at the Mediation Centre of the Judicial Power of the State of Querétaro de Arteaga.

Quintana Roo: Ley de Justicia Alternativa para el Estado de Quintana Roo. First published: 16 de diciembre de 2009. <http://info4.juridicas.unam.mx/adprojus/leg/24/928/default.htm?i=1>

Sinaloa: There is no specific law in mediation.

San Luis Potosí: Ley de Mediación y Conciliación para el Estado de San Luis Potosí. Publicación: 16 de octubre de 2012. <http://www2.scjn.gob.mx/le/Reformas.aspx?idEdo=23&idLey=90048>

Sonora: Ley de Mecanismos Alternativos para el estado de Sonora. First published: 7 de abril de 2008. <http://info4.juridicas.unam.mx/adprojus/leg/27/1059/default.htm?i=1>

Tabasco: There is no specific law, nevertheless there is an agreement by the Judicature Counsil for the creation of the Integral Centre on Alternative Dispute Resolution.

Tamaulipas: Ley de Mediación para el Estado de Tamaulipas. First published: 21 de agosto de 2007. <http://info4.juridicas.unam.mx/adprojus/leg/29/1138/default.htm?i=1>

Tlaxcala: Ley que Regula el Sistema de Mediación y Conciliación en el estado de Tlaxcala. First published: 13 de abril de 2007. <http://docs.mexico.justia.com/estatales/tlaxcala/ley-que-regula-el-sistema-de-mediacion-y-conciliacion-en-el-estado-de-tlaxcala.pdf>

Veracruz: Ley Número 256 de Medios Alternativos para la Solución de Conflictos para el Estado Libre y Soberano de Veracruz-Llave. First

published: 15 de agosto de 2005. http://info4.juridicas.unam.mx/adprojus/leg/31/1214/default.htm?_s=1

Yucatán: Ley de Mecanismos Alternativos de Solución de Controversias en el Estado de Yucatán. First published: 27 de julio de 2009. http://info4.juridicas.unam.mx/adprojus/leg/32/1263/default.htm?_s=1

Zacatecas: Ley de Justicia Alternativa del Estado de Zacatecas. First published: 31 de diciembre de 2008. http://info4.juridicas.unam.mx/adprojus/leg/33/1298/default.htm?_s=1