

Conclusions and Recommendations

**Commission spéciale concernant la
Convention de La Haye du 25 octobre 1980 sur les
aspects civils de l'enlèvement international d'enfants
(du 27 septembre au 1er octobre 2002)**

**Special Commission concerning the
Hague Convention of 25 October 1980 on the
Civil Aspects of International Child Abduction
(27 September to 1 October 2002)**

1. GOOD PRACTICE GUIDE

- (a) *Publication*: The Permanent Bureau is authorised, in preparing the Guide to Good Practice for publication, to make changes of an editorial nature, to update, where necessary, any factual information contained in the Guide, to determine the presentation of the material in the Guide, provided that this did not involve any changes in substance or emphasis and to prepare a general introduction to the Guide explaining its background.
- (b) *Preventive measures*: The Permanent Bureau should continue to gather information concerning the measures adopted in different Contracting States to prevent abductions from taking place. The experience of non-governmental organisations in this field should be taken into account. The Permanent Bureau should prepare a report on the subject with a view to the possible development of a Guide to Good Practice.
- (c) *Enforcement*: The Permanent Bureau should continue to gather information on the practice of the enforcement of return orders in different Contracting States. The Permanent Bureau should prepare a report on the subject with a view to the possible development of a Guide to Good Practice.

2. TRANSFRONTIER ACCESS / CONTACT

- (a) It is premature to begin work on a Protocol to the 1980 Convention. If the alternative steps outlined below do not lead to significant improvements in practice, the issue of a Protocol should be revisited in the future.
- (b) Chapter 5 of Working Document No 3 should be retained subject to agreed modifications.
- (c) Work should continue on a separate chapter of the Guide to Good Practice relating to transfrontier access/contact in the context of the 1980 Convention with the following objectives:
 - a. to promote consistent and best practices in relation to those matters which it is agreed fall within the competence and obligations of States Parties under the Convention,
 - b. to provide examples of practice even in relation to matters which fall within the disputed areas of interpretation.

- (d) Work should begin on the formulation of general principles and considerations. The idea is not to create a set of principles applying to access cases generally, but rather to draw attention to certain general considerations and special features, which need to be borne in mind by Contracting States and their authorities when formulating policies in respect of international access / contact cases. These general principles would not be binding; they would be advisory in nature. As well as offering general advice to States in formulating policy in this area, the general principles could be helpful to Central Authorities in informing their practice, they could possibly be helpful to the courts and other authorities, as well as to applicants as they present their cases.
- (e) It is recognised that the provisions of 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* has the potential to make a substantial contribution to the solution of certain problems surrounding cross-frontier access/contact. Those States which have already agreed in principle to ratify or accede to the 1996 Convention are urged to proceed to ratification or accession with all due speed. Other States are strongly encouraged to consider the advantages of ratification or accession and implementation.
- (f) The Meeting notes and welcomes the readiness of some judges from common law jurisdictions to tackle problems posed by conflicting interpretations of Article 21 in their jurisprudence by proposing a common law judicial congress.

3. CHILD ABDUCTION, TRANSFRONTIER ACCESS / CONTACT AND ISLAMIC STATES

The Permanent Bureau should continue the work it has begun concerning the development of co-operation between Islamic and other States in resolving problems of child abduction and transfrontier access/contact, including the analysis and review of the various bilateral agreements and arrangements that exist and exploration of the potential of a multilateral approach, including through the use of existing Hague Conventions.

4. JUDICIAL SEMINARS AND THE JUDGES' NEWSLETTER

The meetings of judges from different jurisdictions foster international understanding, they promote judicial co-operation and they help to spread helpful practices and precedents across jurisdictions. The Hague Conference should continue to remain active in this area, providing assistance where it is requested, supporting the development of judicial co-operation and communications, both generally and in the context of individual cases where required, and continuing publication of Judges' Newsletters on International Child Protection.

5. PRACTICAL MECHANISMS FOR FACILITATING DIRECT INTERNATIONAL JUDICIAL COMMUNICATIONS IN THE CONTEXT OF THE HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The Permanent Bureau will:

- (a) Continue the formal consultation with Member States of the Hague Conference as well as other States Parties to the *1980 Hague Convention*, based on the Preliminary Report together with the Report that will be drawn up by the Permanent Bureau on the Conclusions and Recommendations of the Special Commission of September / October 2002.

- (b) Continue informal consultations with interested judges based on the Preliminary Report together with the Report that will be drawn up by the Permanent Bureau on the Conclusions and Recommendations of the Special Commission of September / October 2002.
- (c) Continue to examine the practical mechanisms and structures of a network of contact points to facilitate at the international level communications between judges or between a judge and another authority.
- (d) Complete the Final Report that will include further analysis of policy issues and tentative conclusions.
- (e) Draw up an inventory of existing practices relating to direct judicial communications in specific cases under the 1980 Hague Convention with the advice of a consultative group of experts drawn primarily from the judiciary.

6. INCASTAT

With regard to the development of a database on the 1980 Hague Convention, the Meeting recognises the work begun by the Permanent Bureau, with the support of the Canadian Government and the WorldReach Software Corporation. It encourages the Permanent Bureau to continue these efforts in co-operation with Contracting States and their Central Authorities.