

**RAPPORT SUR LES TRAVAUX FUTURS RECOMMANDÉS PAR LA COMMISSION SPÉCIALE SUR
LE FONCTIONNEMENT PRATIQUE DE LA CONVENTION ENLÈVEMENT D'ENFANTS DE 1980
ET DE LA CONVENTION PROTECTION DES ENFANTS DE 1996**

établi par le Bureau Permanent

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**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**

drawn up by the Permanent Bureau

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I. Introduction

1. The purpose of this document is to provide a brief additional background to the two recommendations for further work to be submitted for the consideration of the Council on General Affairs and Policy of the Conference (hereinafter, "the Council"), as listed in the Work Programme of the Permanent Bureau (Prel. Doc. No 2 of February 2012).¹ These two proposals are part of the Conclusions and Recommendations of Part II of the Sixth Meeting of the Special Commission to review the practical operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter, "the 1980 Convention") 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* (hereinafter, "the 1996 Convention"), which took place in The Hague from 25 to 31 January 2012 (hereinafter, "the 2012 Special Commission (Part II)").

2. Although the original expectation was to report to the Council on the feasibility and desirability of a protocol to the 1980 Convention, for the reasons explained below, Part II of the Special Commission instead considered the need for further work in several areas of international family law and not necessarily limited in form to a protocol to the 1980 Convention. The Special Commission has recommended that further substantive work be done in two specific areas: (1) 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; and (2) the application of the Article 13(1) *b*) defence, including allegations of domestic and family violence, in connection with return proceedings under the 1980 Convention, possibly as a Guide to Good Practice.²

¹ "Work Programme of the Permanent Bureau for the next financial year (1 July 2012 – 30 June 2013)", Prel. Doc. No 2 of February 2012 for the attention of the Council of April 2012 on General Affairs and Policy of the Conference, available on the Hague Conference website at < www.hcch.net > under "Work in Progress", then "General Affairs", at paras 5 and 8.

² The 2012 Special Commission (Part II) adopted the following Conclusions and Recommendations:

Recognition and enforcement of agreements

76. Recognising that, in the course of international child disputes, the parties may enter into agreements settling their dispute, the Special Commission recommends that exploratory work be undertaken to identify legal and practical problems that may exist in the recognition and enforcement abroad of such agreements, taking into account the implementation and use of the 1996 Convention.

77. To this end, the Special Commission recommends that the Council on General Affairs and Policy consider authorising the establishment of an Expert Group to carry out further exploratory research, which would include identification of the nature and extent of the legal and practical problems in this area, including, specifically, jurisdictional issues and would evaluate the benefit of a new instrument in this area, whether binding or not.

Article 13(1) *b*) of the 1980 Convention, including allegations of domestic and family violence

80. The Special Commission notes that the evaluation of the evidence and the determination of the grave risk of harm exception (Art. 13(1) *b*)), including allegations of domestic violence, are an exclusive matter for the authority competent to decide on the return, having due regard to the aim of the 1980 Convention to secure the prompt and safe return of the child.

81. The Special Commission recommends that further work be undertaken to promote consistency in the interpretation and application of Art. 13(1) *b*) including, but not limited to, allegations of domestic and family violence.

82. The Special Commission recommends that the Council on General Affairs and Policy authorise the establishment of a Working Group composed of judges, Central Authorities and cross-disciplinary experts to develop a Guide to Good Practice on the interpretation and application of Article 13(1) *b*), with a component to provide guidance specifically directed to judicial authorities, taking into account the Conclusions and Recommendations of past Special Commission meetings and Guides to Good Practice.

See Conclusions and Recommendations of the 2012 Special Commission (Part II), available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

II. Possible protocol to the 1980 Convention and Part II of the Special Commission

3. The issue of a possible protocol to the 1980 Convention was first raised at the Hague Conference on Private International Law in the context of discussions concerning transfrontier access / contact. The Special Commission of October 2002³ decided that it would be premature to begin work on a protocol, but stated that work should continue on the development of a Guide to Good Practice on the issue of transfrontier contact / access in the context of the 1980 Convention, which was completed in 2008.⁴

4. Subsequent proposals by Switzerland to begin work on a protocol had been presented first in 2005 to the Special Commission⁵ on General Affairs and Policy of the Conference⁶. Further proposals were put forward at the 2006 meeting of the Special Commission on General Affairs and Policy, at the 2006 Fifth Special Commission Meeting⁷ on the 1980 and 1996 Conventions,⁸ at the meeting of the Council in 2007 and in preparation for the Council in 2008.⁹ In 2008, the Council reserved for future consideration the feasibility of a protocol containing auxiliary rules designed to improve the operation of the Convention.¹⁰

5. Subsequently, at its meeting of March / April 2009, the Council authorised the Permanent Bureau to begin preliminary consultations "concerning the desirability and feasibility of a protocol to the [*Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*] containing auxiliary rules to improve the operation of the Convention".¹¹

³ Special Commission concerning the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (27 September – 1 October 2002).

⁴ See "Report and Conclusions of the Special Commission concerning the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (27 September – 1 October 2002)", available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention", Conclusions and Recommendations Nos 2(a) and 2(c).

⁵ In 2007 the work undertaken by the Special Commission on General Affairs and Policy of the Conference was taken over by the Council on General Affairs and Policy of the Conference (see the Statute of the Hague Conference on Private International Law).

⁶ See "Report of the Special Commission on General Affairs and Policy of the Conference of 31 March – 1 April 2005", Prel. Doc. No 32 A of May 2005 for the attention of the Twentieth Session, available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "General Affairs", at p. 34.

⁷ Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation 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* (30 October – 9 November 2006) (hereinafter, "the 2006 Fifth Special Commission Meeting").

⁸ See paras 251 *et seq.* of the "Report of the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation 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* (30 October – 9 November 2006)", available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

⁹ "Draft Additional Protocol to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*" (submitted by the Swiss delegation), available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "General Affairs". This proposal was communicated to the National and Contact Organs of the Members, all States Parties to the 1980 Convention, and the other States and Organisations that attended the Fifth Meeting of the Special Commission to review the operation of the 1980 Convention, for their views on 1 November 2007 (L.c. ON No 35(7)).

¹⁰ Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (1–3 April 2008), available on the Hague Conference website *ibid.*, p. 2.

¹¹ Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (31 March – 2 April 2009), available on the Hague Conference website *ibid.*, p. 2.

6. The meeting of the Council in 2011 took note of the plans for the Sixth Meeting of the Special Commission to review the practical operation of the 1980 and 1996 Conventions to be held in two parts, Part I in June 2011 and Part II January 2012. In accordance with directions from the Council, it was decided that the 2012 Special Commission (Part II) would primarily consider the issue of the desirability and feasibility of a protocol to the 1980 Convention, allowing for the Special Commission to be informed by the discussions from Part I of the Special Commission concerning the practical operation of the 1980 and 1996 Conventions before addressing what types of auxiliary rules might be necessary to improve the operation of the Convention.¹²

7. In anticipation of Part II, the Permanent Bureau circulated in December 2010 to States Parties and to Members of the Hague Conference, a questionnaire on the desirability and feasibility of a protocol to the 1980 Convention (hereinafter, "Questionnaire II", Prel. Doc. No 2)¹³ inquiring about several potential topics for inclusion in any protocol. The Permanent Bureau also prepared a preliminary report prior to Part I (Prel. Doc. No 7),¹⁴ which details the history of the request to address the possibility of a protocol and provides a summary based on the limited responses from 16 States, including the EU, received by 1 May 2011.¹⁵

8. As a result of the discussions that took place during Part I of the Special Commission in June 2011, the receipt of eight additional responses¹⁶ to Questionnaire II and extensive consultations with Members representative of the various positions along the spectrum concerning the desirability of a protocol to the 1980 Convention, it appeared that it would not be possible to achieve consensus to ask the Council for a mandate to proceed with a protocol to the 1980 Convention. It was in this spirit that Switzerland, as the State that had primarily encouraged consideration of a protocol for several years, indicated that it would ask that the Working Document from 2007 for a protocol¹⁷ not be considered at this time.

9. However, based on Part I, responses to Questionnaire II and consultations, there were two areas where there appeared to be substantial support for further work: cross-border recognition and enforcement of mediated agreements and domestic violence in the context of return proceedings.¹⁸ The agenda for the 2012 Special Commission (Part II) therefore focused first on these specific areas of further work in connection with the 1980 and 1996 Conventions, as well as on the matters originally scheduled for discussion at Part II of the meeting: that is, international family relocation (Prel. Doc. No 11), the future of the "Malta Process" and the role of the Hague Conference in monitoring and supporting the 1980 and 1996 Conventions (Prel. Doc. No 12). A Guide to

¹² Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (5-7 April 2011), available on the Hague Conference website *ibid.*, para. 7, p. 2.

¹³ "Questionnaire on the desirability and feasibility of a protocol to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*", Prel. Doc. No 2 of December 2010 for the attention of the Special Commission of June 2011. Available on the Hague Conference website *ibid.*

¹⁴ "Consultations on the desirability and feasibility of a protocol to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction - A Preliminary Note*", Prel. Doc. No 7 of May 2011 for the attention of the Special Commission of June 2011. Available on the Hague Conference website *ibid.*

¹⁵ Australia, Bahamas, Burkina Faso, Chile, China (Mainland, Hong Kong SAR), Colombia, Dominican Republic, El Salvador, the European Union, Mexico, Montenegro, New Zealand, Norway, Switzerland, Ukraine and Zimbabwe.

¹⁶ Argentina, Armenia, Canada, Israël, Monaco, Panama, the United States of America and Venezuela; 2 more answers were received after 1 November 2011 (the Philippines and China (Macao SAR)) and were therefore not included in the Annex to Prel. Doc. No 13, which updates Prel. Doc. No 7, see *infra* note 19.

¹⁷ *Op. cit.* note 9.

¹⁸ Consideration was also given to a possible international legal basis for direct judicial communications, however, there was not enough support for further normative work in this area at this time.

Part II of the Sixth Meeting of the Special Commission (Prel. Doc. No 13)¹⁹ was prepared and circulated prior to Part II, which explains in detail the reasons behind the shift of focus in the agenda.

10. The objective of the 2012 Special Commission (Part II) was therefore to consider the need for further work in several areas and to establish recommendations concerning such further work and the form in which this work might be carried out in order to submit such recommendations to the Council. The form for further work under consideration was not limited to a protocol but included a full spectrum of potential instruments and tools. The 2012 Special Commission (Part II) recommended that the Council consider authorising the establishment of an Expert Group to carry out further exploratory research in the area of the international recognition and enforcement of agreements in the area of international child disputes and authorise a Working Group to develop a Guide to Good Practice on the interpretation and application of Article 13(1) b).²⁰

III. Recognition and enforcement abroad of agreements

A. The work of the Hague Conference in the area of mediation

11. The 2012 Special Commission (Part II) considered the need for further work, possibly in the form of a binding instrument, which would render enforceable cross-border agreed solutions in international child disputes.²¹

12. The Hague Conference has a long history of working in the field of cross-border dispute resolution by amicable means, including mediation, in family matters.²² This work has been undertaken both in the context of discussions on the operation of the 1980 Convention,²³ but also, more generally, at the request of the Council, on the broader topic of "cross-border mediation in family matters".²⁴ This work also furthers the provisions in the modern Hague Children's Conventions that promote amicable dispute resolution, including those in the 1980, 1996 and 2007 Conventions.²⁵

¹⁹ "Guide to Part II of the Sixth Meeting of the Special Commission and consideration of the desirability and feasibility of further work in connection with the 1980 and 1996 Conventions", Prel. Doc. No°13 of November 2011 for the attention of the Special Commission of January 2012. Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

²⁰ See *supra* notes 1 and 2.

²¹ It should be noted that the general issue of cross-border recognition and enforcement is currently under consideration and will be discussed by the Council in the civil and commercial context in reviewing the merits of resuming the Judgments Project (see "Ongoing work of international litigation and possible continuation of the Judgments Project", Prel. Doc. No 5 of February 2012 for the attention of the Council of April 2012, available on the Hague Conference website *ibid.*). It is also the subject of a Preliminary Note (see "Recognition and enforcement of foreign civil protection orders: a Preliminary Note", Prel. Doc. No 7 of March 2012 for the attention of the Council of April 2012, available on the Hague Conference website *ibid.*) in connection with the recognition and enforcement of foreign civil protection orders. Future instruments in the area of cross-border recognition would be at the core of the unification work of the Hague Conference and would facilitate cross-border relations and co-operation.

²² Indeed, the provisions in the modern Hague Children's Conventions promote amicable dispute resolution: see, for example, Arts 7(2) c) and 10 of the 1980 Convention, Art. 31 b) of the 1996 Convention and Arts 6(2) d) and 34(2) i) of the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (the "2007 Convention").

²³ See *infra*, para. 13.

²⁴ See *infra*, paras 15 *et seq.*

²⁵ See *supra* note 22.

13. A first "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"²⁶ was prepared for the 2006 Fifth Special Commission Meeting by the Permanent Bureau. The Special Commission welcomed "the mediation initiatives [...] taking place in Contracting States in the context of the 1980 Hague Convention"²⁷ and invited "the Permanent Bureau to continue to keep States informed of developments in the mediation of cross-border disputes concerning contact and abduction".²⁸ The subsequent 2006 Special Commission on General Affairs and Policy²⁹ also welcomed this research.

14. A broader "Feasibility study on cross-border mediation in family matters", as mandated by the 2006 Special Commission on General Affairs and Policy,³⁰ was presented to the Council in April 2007.³¹ The study provided an overview of the developments in family mediation on a national and international level and explored possible directions for the Hague Conference's future work in the field.³²

15. In April 2008, the Council, having received a number of comments from Members in response to a request by the 2007 Council,³³ "invited the Permanent Bureau to continue to follow, and keep Members informed of, developments in respect of cross-border mediation in family matters".³⁴ Additionally, as a "first step", it asked the Permanent Bureau to commence work on: "a Guide to Good Practice on the use of mediation in the

²⁶ Drawn up by S. Vigers (former Legal Officer of the Permanent Bureau), Prel. Doc. No 5 of October 2006 for the attention of the 2006 Special Commission, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention" and "Preliminary Documents".

²⁷ Conclusions and Recommendations of the 2006 Fifth Special Commission Meeting, *op. cit.* (note 8), Recommendation No 1.3.2.

²⁸ *Ibid.*, at para. 1.3.3.

²⁹ "Conclusions of the Special Commission of 3-5 April 2006 on General Affairs and Policy of the Conference", Prel. Doc. No 11 of June 2006 for the attention of the Council of April 2007 on General Affairs and Policy of the Conference, available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "General Affairs".

³⁰ *Ibid.*, Conclusion No 3.

³¹ Drawn up by the Permanent Bureau, Prel. Doc. No 20 of March 2007 for the attention of the Council of April 2007 on General Affairs and Policy of the Conference, available on the Hague Conference website *ibid.*

³² This included a proposal for the Permanent Bureau "to maintain a more general watching brief on, and to report periodically upon, the development of cross-border mediation in family matters"; alternatively, for "[f]urther work, including consultations [...] on the question whether the lack of a fully comprehensive regime of private international rules concerning agreements in the family law area gives rise to any practical disadvantages or impediments for the mediation process such as would justify the development of a private international law instrument"; or "Consultations [...] with Member States to explore the desirability of developing an instrument designed to improve the flow of information and to provide for closer co-operation between States in facilitating the use of mediation and in giving effect to mediated agreements." *Ibid.*, at paras 5.11 (1) to (3).

³³ "Feasibility study on cross-border mediation in family matters – Responses to the Questionnaire", Prel. Doc. No 10 of March 2008 for the attention of the Council of April 2008 on General Affairs and Policy of the Conference; the 2007 Council on General Affairs and Policy had invited Members to: "provide comments, before the end of 2007 [...] with a view to further discussion of the topic at the spring 2008 meeting of the Council", Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (2-4 April 2007), at para. 3.

³⁴ Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (1-3 April 2008), at p. 1.

context of the [1980 Convention], to be submitted for consideration at the next meeting of the Special Commission [...] in 2011".³⁵ This Guide, and thus this "first step", is about to be completed as a result of Part I of the Special Commission in June 2011.³⁶

16. While Part I of the Special Commission welcomed the draft Guide to Good Practice on Mediation³⁷ as providing helpful general assistance in relation to the use of mediation in the context of the 1980 Convention, the discussions pointed to the specific issue of the recognition and enforcement of agreed solutions, both in the context of applications under the 1980 Convention and also in the context of cross-border disputes concerning children more generally, as an issue that warranted further exploration. The issue was also raised during the discussions in Part I on the draft Practical Handbook on the operation of the 1996 Convention.³⁸ Indeed, provisions in the 1996 Convention encourage amicable resolution but do not necessarily make such agreements enforceable cross-border, as discussed below.

17. The importance of ensuring the enforceability (in all relevant jurisdictions) of mediated agreements³⁹ in cross-border family disputes has also previously been raised in the context of the Hague Conference's work in the field of mediation. For example, a proposal by Israel for an international instrument on cross-border mediation of family disputes, presented to the Council in 2009, emphasised the need to render mediated agreements enforceable in the different legal systems concerned.⁴⁰ Further, the Working

³⁵ *Ibid.* In response to this request, the draft Guide to Good Practice on Mediation ("Draft Guide to Good Practice under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Part V – Mediation", Prel. Doc. No 5 of May 2011 for the attention of the Special Commission of June 2011, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention" and "Preliminary Documents") was submitted to Part I of the Special Commission meeting in June 2011.

³⁶ See Conclusions and Recommendations Nos 58 and 59 of Part I of the Sixth Meeting of the Special Commission to review the practical operation of the 1980 and the 1996 Conventions, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

³⁷ *Op.cit.* note 35.

³⁸ "Revised draft Practical Handbook on the operation 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*", Prel. Doc. No 4 of May 2011, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention" and "Preliminary Documents".

³⁹ It should also be noted that a number of European initiatives highlight the crucial importance of ensuring that a mediated agreement is rendered binding in all relevant legal systems, see: *Council of Europe Recommendation No R (98) 1 of the Committee of Ministers to Member States on family mediation*, adopted by the Committee of Ministers on 21 January 1998, available at < <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1153972&SecMode=1&DocId=450792&Usage=2> > (last consulted 27 March 2012), see IV, "The status of mediated agreements"; *Council of Europe Recommendation (2002)10 of the Committee of Ministers to Member States on mediation in civil matters*, adopted by the Committee of Ministers on 18 September 2002, available at < <https://wcd.coe.int/ViewDoc.jsp?id=306401&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383> > (last consulted 27 March 2012), see in particular paras 17 and 46; *European Code of Conduct for Mediators*, established by the European Commission and a group of stakeholders in 2004, text available at < http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.htm > (last consulted 27 March 2012); see point 3.3.; and *Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters*, text available at < <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0052:EN:NOT> > (last consulted 27 March 2012), see Recital 19 and Art. 6 of the Directive calling for appropriate procedures to be made available to give legal effect to mediated agreements, be it by court approval, court registration or otherwise.

⁴⁰ Work. Doc. No 1 of 31 March 2009, see proposed Art. 7 (Enforceability of the settlement agreement):

"1. A settlement agreement made in a Contracting State shall be entitled to enforcement in every Contracting State provided that it is enforceable in the State of the mediation and when in that State a settlement agreement is enforceable by a court order shall be entitled to recognition and enforcement.

2. Recognition and enforcement of a settlement agreement may be refused if enforcement is manifestly incompatible with the public policy of the Contracting State addressed."

Party on mediation in the context of the Malta Process⁴¹ identified the enforceability of mediated agreements as a crucial centre-piece in this regard. The work of this Working Party was welcomed during Part I of the Special Commission⁴² and an updated report will be given to Council in April 2012.

18. Finally, a number of experts identified in answers to Questionnaire II prior to the 2012 Special Commission (Part II) the area of recognition and enforcement of agreements resulting from mediation or other similar amicable processes as one where provisions may be of considerable practical use,⁴³ given that in cross-border disputes concerning children, the agreements will often need to be rendered legally binding in multiple jurisdictions: for example, in the State of the habitual residence of the child, as well as in the State where contact with the child is to be exercised, if this is to take place in another jurisdiction.

19. Although much of the discussion among experts focused on agreements achieved through mediation,⁴⁴ the experts understood that the term "mediated agreements", as used in Preliminary Document No 13⁴⁵ and in debate at the Special Commission, was meant to include other forms of amicable resolution. A number of other processes aim to bring about the agreed resolution of disputes concerning children (*e.g.*, conciliation, early neutral evaluation, collaborative law, etc.).⁴⁶ Indeed the Conclusions and Recommendations were drawn broadly to reach agreements by the parties settling international child disputes.

B. Issues concerning the recognition and enforcement of agreements

20. There are two separate issues which regularly must be considered when discussing the issue of rendering agreed solutions legally binding and enforceable in cross-border disputes, and hence in multiple legal systems:

- (1) Issue (1): the need to render the agreement legally binding and enforceable in the legal system in which the mediated agreement has been concluded⁴⁷ (hereinafter, "State A"); and
- (2) Issue (2): the need to ensure that the agreement, legally binding and enforceable in State A, is also legally binding and enforceable in any other relevant legal system (hereinafter, "State B", and possibly further States C, D, etc.).

⁴¹ See, for further details, "The 'Principles for the establishment of mediation structures in the context of the Malta Process' and the Explanatory Memorandum", drawn up by the Permanent Bureau, Prel. Doc. No 6 of May 2011 for the attention of the Special Commission of June 2011, available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "Child Abduction".

⁴² See Conclusions and Recommendations Nos 60 to 62 of Part I of the Sixth Meeting of the Special Commission to review the practical operation of the 1980 and the 1996 Conventions, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

⁴³ *E.g.*, Armenia, Australia, Israel, Panama, Switzerland and Ukraine.

⁴⁴ Mediation is indeed one of the most widely promoted methods of alternative dispute resolution in family law. See Draft Guide to Good Practice on Mediation, *op. cit.* (note 35), at p. 11.

⁴⁵ See *supra* note 19.

⁴⁶ When considering the practical challenges which may arise in rendering agreed solutions in cross-border disputes concerning children binding, it is apparent that the challenges described will not be unique to agreements reached as a result of mediation. The discussion of "mediated agreements" should, therefore, be taken to include agreements reached as a result of other similar processes.

⁴⁷ Mediation may occur in one place or cross-border by way of long distance mediation; the agreement may be concluded in a different place.

21. In many legal systems, in disputes concerning children, issue (1) is a matter of seeking the court's approval of the agreement, such that the agreement will be rendered binding and enforceable by being made into a court order.⁴⁸ However, there are also some States where, in addition, it appears to be possible to render an agreement "enforceable" by other means: by registering the agreement with the court (without needing to seek the court's approval of the terms);⁴⁹ by notarisation;⁵⁰ by both parents requesting a local official to determine that a written agreement on parental responsibility, domicile and time spent with the child may be enforced;⁵¹ and by formal approval by a social welfare board.⁵² In a few States, no additional formalities are required, and mediated agreements in family disputes involving children are immediately enforceable without any additional formalities being required.⁵³

22. One question which may confront parents attempting to render an agreement enforceable by seeking from a court to turn the agreement into a court order will be whether the court in the State where they have undertaken the mediation or have reached an agreement has jurisdiction to make a court order. In cross-border family disputes, both international⁵⁴ and internal⁵⁵ jurisdiction will play a role when it comes to deciding whether a certain court will be able to assume jurisdiction to make a court order in the terms of the agreement. For example, in the case of a wrongful removal in the sense of the 1980 Convention, the question may arise whether it is the court of the State where the child was wrongfully removed or of the State of the habitual residence which has such jurisdiction (see *infra* section III.c.). Particular problems may arise when the mediated agreement covers multiple issues for which different jurisdictional rules apply. In addition, even if it is possible in a legal system to obtain such a court order, the practical reality of this process in some States may be long and expensive.

23. Issue (2) could be achieved by two methods: (i) taking the agreement to State B (or C, D, etc.) and requesting that a court in that State make a court order incorporating the terms of the agreement. Whether the court in State B (or C, D, etc.) can make such an order will again depend upon questions of international and internal jurisdiction

⁴⁸ *E.g.*, Argentina, Australia, Belgium, Brazil, Burkina Faso, China (Hong Kong SAR), Costa Rica, Czech Republic, Denmark, Estonia, Finland (by the Social Welfare Board), France, Greece, Honduras, Hungary (by the Guardianship Authority), Ireland, Israel, Latvia, Lithuania, Mauritius, Mexico, Norway, Paraguay, Poland, Romania, Slovenia, Spain, Sweden (by the Social Welfare Board), Switzerland, the United Kingdom (Northern Ireland; England and Wales), the United States of America and Venezuela (information obtained from responses to Country Profile – question 19.5 – as at January 2012).

⁴⁹ Australia, Burkina Faso, Estonia, Greece, Honduras (information obtained from responses to Country Profile – question 19.5 – as at January 2012).

⁵⁰ Belgium, Burkina Faso, Denmark, Estonia, Hungary, Romania, Slovenia (information obtained from responses to Country Profile – question 19.5 – as at January 2012).

⁵¹ Norway (by the County Governor), (information obtained from responses to Country Profile – question 19.5 – as at January 2012).

⁵² Finland, Sweden (information obtained from responses to Country Profile – question 19.5 – as at January 2012).

⁵³ Ecuador, Panama (information obtained from responses to Country Profile – question 19.5 – as at January 2012).

⁵⁴ *I.e.*, which State has jurisdiction to make a court order in respect of the particular child(ren) concerned, and regarding the particular subject-matter of the agreement.

⁵⁵ *I.e.*, which court within a State has jurisdiction to make a court order in respect of the particular subject-matter of the agreement (this could be different courts within that State, for example, if the agreement includes custody / contact issues, as well as an agreement on child support).

(discussed *supra*); or (ii) once the agreement has been rendered binding and enforceable in State A, by seeking recognition and enforcement of State A's court order in State B.⁵⁶

24. Among the modern Hague Children's Conventions, the 1996 Convention, as well as the 2007 Convention, may assist parents in achieving recognition of their agreed solution in a cross-border dispute concerning children in all Contracting States concerned.⁵⁷ However, using the 1996 Convention for this purpose requires that the agreement be embodied in a court order (or other measure taken by a State authority) in compliance with Convention terms (Art. 1 *a*) of the 1996 Convention links the "measures" to "authorities" that do or do not have jurisdiction to protect the person or property of the child). The 2007 Convention extends more broadly by applying to the recognition and enforcement of "maintenance arrangements", which include "agreement[s] in writing relating to the payment of maintenance which i) ha[ve] been formally drawn up or registered as an authentic instrument by a competent authority; or ii) ha[ve] been authenticated by, or concluded, registered or filed with a competent authority, and may be the subject of review and modification by a competent authority".⁵⁸

25. In addition, these Conventions may not offer a satisfactory solution where the agreement covers matters which fall outside the scope of one or both Conventions. The reality is that when parties mediate or try to reach agreed solutions, they do so without being bound by the coverage of one specific convention – they negotiate over a package of rights, of conditions, of terms such as return in an abduction case, custody, access, maintenance and support, and property.

26. Overall, it may be a lengthy, cumbersome and expensive process to render an agreed solution in a cross-border family dispute involving an array of issues legally binding in all States concerned. Yet, it is unquestionably in the "child's best interest" when parties can reach an agreed solution, as the relationship of all will have less friction and the resulting agreement is more readily honoured if achieved through amicable resolution.

C. Cross-border disputes concerning children and involving a wrongful removal or retention of a child⁵⁹

27. Specific jurisdictional issues arise in cases involving the wrongful removal or retention of a child, when parties wish to render an agreed solution to a 1980 Convention application legally binding and enforceable in the requested State by seeking a court order in that State (hereinafter, "State A", often the State where the mediation has taken place).

⁵⁶ An additional option may exist where an agreement dealing with family law issues is legally binding and enforceable in State A without the need to be turned into a court order and where there is a legal framework in place between State A and State B providing for the recognition of such an agreement under the same conditions as judgments; see, for example, Art. 46 of the Brussels IIa Regulation (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). See, also, Art. 30 of the 2007 Convention for maintenance agreements.

⁵⁷ While using the 1996 Convention for this purpose requires that the agreement be embodied in a court order (or other measure taken by a State authority) in compliance with Convention terms, the 2007 Convention can result in an agreement being enforceable in another State without the need to be turned into a court order: see Art. 30 of the 2007 Convention. The 2007 Convention currently only has one Contracting State (Norway) and therefore has not yet entered into force.

⁵⁸ Arts 3 and 30; see also Art. 46 of the Brussels IIa Regulation.

⁵⁹ See Art. 3 of the 1980 Convention and Art. 7 of the 1996 Convention.

28. The 1980 Convention is premised on the idea that the most appropriate forum to determine the long-term merits of custody and contact issues concerning a child is usually the State of the habitual residence of that child. The child's unilateral removal to or retention in another State by one parent in breach of the other parent's custody rights should not lead to a change of jurisdiction.⁶⁰ It is on this basis that Article 16 of the 1980 Convention states:

"After receiving notice of a wrongful removal or retention of a child [...] the Contracting State to which the child has been removed or in which it has been retained *shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention* [...]."⁶¹

29. Therefore, in an abduction case, where the parents have reached an agreed solution on the question of the child's return or non-return as well as the long-term custody and contact issues concerning the child, as part of the "package", the effect of Article 16 of the 1980 Convention may⁶² be as follows:

- (a) Agreement including *return* of the child to State B: the court of State A, seized with the return proceedings, may consider that, while it can make a court order concerning the agreement to return the child (in effect, to conclude the return proceedings by consent), Article 16 (which prohibits a decision on the merits of rights of custody "until it has been determined that the child is *not* to be returned"⁶³), continues to prohibit the court from approving the terms of the agreement insofar as they deal with the merits of the custody and contact issues.
- (b) Agreement including *non-return* of the child (i.e., child remains in State A): the court in State A, seized with the return proceedings, may consider that it can approve, in a court order, the part of the agreement concerning the non-return of the child (in effect, to conclude the return proceedings by consent). It may also consider that it can then immediately proceed to approve, in a court order, the agreement relating to the long-term custody and contact issues (Art. 16 – which now no longer "blocks" the jurisdiction of State A on issues relating to custody since it has been determined that the child is "*not* to be returned"⁶⁴). However, whether this is possible will depend upon the internal and international jurisdiction

⁶⁰ See para. 16 of the Pérez-Vera Explanatory Report on the 1980 Convention: "The insurmountable difficulties encountered in establishing [...] directly applicable jurisdictional rules indeed resulted in this route being followed which, although an indirect one, will tend in most cases to allow a final decision on custody to be taken by the authorities of the child's habitual residence prior to its removal." Hague Conference on Private International Law, *Actes et documents de la Quatorzième session (1980)*, Tome III, *Child Abduction*, The Hague, Imprimerie Nationale, 1982, pp. 425-473, at p. 429. Cf. *interim* custody and contact issues (e.g., ensuring safe return of the child and the general safety of the child pending the merits of custody and contact issues being dealt with in the State of the child's habitual residence). These *interim*, short-term issues may be dealt with by State A in the scheme provided for by the 1996 Convention if they fall within the scope of Art. 11 of the 1996 Convention (see Art. 7(3)).

⁶¹ Emphasis added. See also para. 121 of the Pérez-Vera Explanatory Report, *ibid.*, at p. 463.

⁶² Of course, the interpretation and application of Art. 16 in Contracting States will be a matter for each Contracting State. These examples are provided from reports given by some Contracting States concerning the challenges which have occurred.

⁶³ Emphasis added.

⁶⁴ *Id.*

of the court to determine such matters. The internal procedural law may also not allow a court dealing with the return proceedings, following a formal termination of those proceedings, to proceed immediately to determine the custody issues.⁶⁵

30. An additional problem of *internal* jurisdiction, which was already raised *supra*, is that the agreed solution in such cases will often deal not only with the specific question of the return or non-return of the child, but also long-term custody and contact issues.⁶⁶ This involves questions of internal jurisdiction as allocated among different courts within a State, especially in abduction cases where jurisdiction may be concentrated. One court might handle Hague abductions and have certain procedures; custody decisions might be handled by another court; and maintenance issues by a third one. Further, usually the different parts of the agreement will be interdependent, *i.e.*, the agreement to the return or non-return will be conditional upon the agreement on the long-term custody and contact issues being put into effect. This means that a partial approval of the agreement (*i.e.*, a court order rendering only the return or non-return binding and enforceable) will not be a satisfactory solution for the parties, who bargained over several issues as a "package", and it may jeopardise the ultimate amicable resolution of the dispute.

31. As far as *international* jurisdiction is concerned, where the 1996 Convention is in force between the two States concerned, Article 7 of the 1996 Convention will also have to be taken into account. Article 7 is a special jurisdictional rule which applies in cases of child abduction.⁶⁷ The effect of Article 7 in abduction cases is that the State of the child's habitual residence immediately before the abduction will retain jurisdiction to take measures for the protection of the person (and property) of the child (*i.e.*, including measures on the merits of custody and contact) until: (a) the child has acquired a habitual residence in another State (usually State A); and (b) the conditions in either Article 7(1) *a*) or *b*) are met. The corollary of this is that, unless the cumulative conditions set out in Article 7 can be satisfied, jurisdiction concerning the merits of the long-term custody and contact issues will remain with State B. State A in these circumstances would not have jurisdiction to approve these matters in a court order, even if the parents would want the court to have jurisdiction to enter their agreement which covers more than simply return and resolves amicable issues of the child's future residence and access.⁶⁸

⁶⁵ Ending the return proceedings with a non-return decision and thus rendering the agreement as regards the non-return binding without immediately rendering the remainder of the agreement on long-term custody and contact issues binding, may, as pointed out *supra*, put the amicable solution of the dispute at risk due to the interdependence of the different parts of the agreement.

⁶⁶ Such combined agreements are reportedly very common since the parties may agree on non-return or return on the condition that the exercise of custody and contact following the return or non-return is agreed upon in a specific fashion: *e.g.*, a left-behind father may agree to the relocation of the child to State B, on the basis that he has certain agreed periods of access in State A. In the alternative, a taking mother may agree to return with the child to State A, on the basis that the father agrees that the child will live with her in State A and have defined access with him.

⁶⁷ Art. 7 of the 1996 Convention is designed to support, as Art. 16 of the 1980 Convention, the notion that an abducting parent should not be able to bring about a change of jurisdiction in relation to the merits of a custody dispute by abducting a child.

⁶⁸ Other provisions of the 1996 Convention, however, seem to offer a solution (or at least, a partial one) in these circumstances: first, the parties may seek a court order in State B rendering the agreement legally binding in State B (which retains jurisdiction over the long-term merits of custody and contact issues in accordance with Art. 7 of the 1996 Convention); or secondly, a transfer of jurisdiction from State B to State A in accordance with Art. 8 or, more usually, Art. 9 of the 1996 Convention could be sought to render the agreement binding in State A by court order. In both options, the parties will benefit from the 1996 Convention's provisions on recognition and enforcement, making their agreement-based court order legally binding and enforceable in all Contracting States to that Convention.

32. As described above, due to the interdependence of the terms of the agreement, it is not a satisfactory solution to terminate the return proceedings in accordance with the agreement without rendering the remainder of the agreement on the long-term custody issues legally binding and enforceable.⁶⁹ Additionally, a practical impediment to pursuing the suggested option of going back to State A may be that the court in State A, seised to turn the parental agreement on custody and contact issues into a court order, may request the presence of both parties in court and may wish to interview the child. Acceding to this request would, however, mean that the abducting parent would have to travel back to State B together with the child, which amounts to a factual return, without the (full) agreement having been rendered legally binding and enforceable. Also immigration issues and possible criminal proceedings against the abducting parent in State B may complicate the matter.

D. Cross-border disputes concerning children that do not involve wrongful removal or retention of a child

33. In “non-abduction” situations there may also be certain difficulties when attempting to render a mediated solution or other agreement in a cross-border dispute concerning a child legally binding and enforceable in the relevant legal systems. As mentioned before, in addition, there might be difficulty in some situations and some legal systems to convert the agreement into a judgment.

34. In an international family relocation case, for example, the non-relocating parent may wish to have an agreement containing clauses on post-relocation access rendered legally binding in the State to which the other parent is to relocate but *before* the relocation takes place (to ensure the access agreement can be enforced in that State, should the need arise). It has to be emphasised that the 1996 Convention may provide a solution in such cases.⁷⁰ If the parents turn their agreement into a court order in the State of the child’s current habitual residence, this court order would be recognised by operation of law in all Contracting States to the 1996 Convention (subject to Art. 23(2)). To resolve any doubt, the parents could request “advance recognition” of the order in accordance with Article 24 of the 1996 Convention. However, if the 1996 Convention or a comparable legal framework is not in force as between the two States concerned, the courts in the State to which the parent and child are to relocate might not consider that they have jurisdiction to deal with the matter before the relocation has occurred (due to the current lack of connection with that State). Furthermore, problems can also arise where an agreement contains clauses on matters that fall outside the scope of the 1996 Convention.

As a “measure directed to the protection of the person of the child” (*cf.* Art. 1), the agreement-based court order made in accordance with the jurisdictional rules of the 1996 Convention will by operation of law be recognised (Art. 23) and can be declared enforceable (Arts 26 *et seq.*) in any other Contracting State to the 1996 Convention (provided no ground in Art. 23(2) is established).

Both of these options, however, may result in considerable further practical difficulties and expense for the parties. For example, whichever option above is used, the court dealing with the custody issues in State B (either rendering the agreement binding, or deciding on the transfer of jurisdiction) is not under a Convention obligation to deal with the case expeditiously (in contrast to the court seised with the return proceedings in State A). Even though courts in many States tend to deal with custody matters in a speedy way, the processes in State B may be too lengthy to keep the return proceedings under the 1980 Convention in State A pending.

⁶⁹ As described *supra* (see note 31).

⁷⁰ See Chapter 10 (in particular 10 c) of the Revised draft Practical Handbook on the operation of the 1996 Convention (Prel. Doc. No 4 of May 2011, *op. cit.* note 38).

E. The way forward, Conclusions and Recommendations of Part II

35. Overall, the analysis offered above suggests that the process of rendering a mediated agreement in a cross-border family dispute involving an array of issues legally binding in all States concerned may be a complicated process.

36. As the 2012 Special Commission (Part II) recommended, an exploratory Expert Group could identify the nature and extent of the legal and practical problems in this area. It could, specifically, identify the jurisdictional issues, some of which have been highlighted above, and evaluate the benefit of a new instrument, whether binding or not. An instrument concerning agreements in family law⁷¹ could be of use not only in abduction situations, but could also assist families more generally, for example in international family relocation cases, by offering an efficient way to render agreements containing a combination of different family law issues in a cross-border situation legally binding and enforceable in the different legal systems concerned. In this regard, compatibility with other international instruments, such as the 2007 Convention, would also need to be explored.

37. Further research would also have to be carried out to assess the attractiveness of such an instrument to particular groups of States, such as certain Shariah law based States, who might be willing to consider joining an international family law instrument dealing with the recognition and enforcement of agreement-based solutions to cross-border family disputes.

IV. Interpretation and application of Article 13(1) b)

38. The 2011 Special Commission (Part I) considered Preliminary Document No 9 of May 2011 on "Domestic and family violence and the Article 13 'grave risk' exception in the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: A reflection paper*".⁷² The consideration of the Special Commission on this topic was divided into three parts: (1) existing research and case law, the evidentiary aspects and the definition of domestic violence within the context of Article 13(1) b); (2) issues of protection, including protective measures for the safe return of the child and accompanying parent; and (3) potential further actions and means to promote consistency.⁷³

39. The Report (Prel. Doc. No 14, Appendix A)⁷⁴ underlined the general commitment of experts to the topic of domestic violence, which can and should be considered in the application of Article 13(1) b). It was noted that there was a general desire among experts to promote greater consistency and good practice in cases where there are allegations of domestic violence, but it was deemed that sufficient discussion had not yet taken place in order to reach conclusions regarding the nature of further work that might

⁷¹ The 2007 Feasibility study on family mediation (Prel. Doc. No 20 of March 2007, *op. cit.* note 31) which explored the possible directions of future work for the Hague Conference referred to agreements in the area of family law more generally.

⁷² Drawn up by the Permanent Bureau, Prel. Doc. No 9 of May 2011 for the attention of the Special Commission of June 2011, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

⁷³ For a summary of the discussion on these topics, see the "Conclusions and Recommendations and Report 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", Prel. Doc. No 14 of November 2011 for the attention of the Special Commission of January 2012, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention", at paras 92-130.

⁷⁴ *Ibid.*

help to achieve these goals. Although three concrete proposals were made during Part I, detailed discussion of the possible approaches was deferred until Part II of the Special Commission.

40. During the discussions of the 2012 Special Commission (Part II), an expert from Canada suggested that the three proposals deferred for consideration from Part I be “merged” into one. In this way, a Working Group could be tasked to produce a Guide to Good Practice on the interpretation and application of the Article 13(1) *b*) exception overall, rather than just domestic violence in the context of return proceedings. The expert also explained that any soft law tool could be a “hybrid” guide, serving multiple users, with a section directed to judges and a separate section directed to Central Authorities.

41. Many experts expressed their support for the proposal of the delegation of Canada, as amended. The majority of experts considered that any future work should not be limited to allegations of domestic and family violence within the context of Article 13(1) *b*), but should include other relevant situations of “grave risk of harm”, such as mental illness, criminal behaviour or drug and alcohol abuse. Many experts also expressed the need to respect the institutional and individual independence of the judiciary.

42. There was broad support for the recommendation to the Council that it authorise the establishment of a Working Group composed of judges, Central Authorities and cross-disciplinary experts to develop a Guide to Good Practice on the interpretation and application of Article 13(1) *b*), with a component to provide guidance specifically directed to judicial authorities, taking into account the Conclusions and Recommendations of past Special Commission meetings and Guides to Good Practice.⁷⁵

43. The Special Commission noted that the evaluation of the evidence and the determination of the grave risk of harm exception (Art. 13(1) *b*)), including allegations of domestic violence, are an exclusive matter for the authority competent to decide on the return, having due regard to the aim of the 1980 Convention to secure the prompt and safe return of the child.⁷⁶

V. Conclusion

44. In light of the Special Commission’s Conclusions and Recommendations, Council may wish to recommend further work in the area of recognition and enforcement of agreements in international child disputes, inviting the Permanent Bureau to set up a small Expert Group to explore the nature and extent of the legal and practical problems that exist in the recognition and enforcement of such agreements, including specifically jurisdictional issues and evaluate the benefit of a new instrument in this area, whether binding or not. The Permanent Bureau should report back to the Council in 2013 on progress.

⁷⁵ Conclusion and Recommendation No 82 of the 2012 Special Commission (Part II), see *supra* note 2.

⁷⁶ Conclusion and Recommendation No 80 of the 2012 Special Commission (Part II), see *supra* note 2.

45. In addition, Council may wish to recommend that further work be undertaken to promote consistency in the interpretation and application of Article 13(1) *b*) including, but not limited to, allegations of domestic violence, inviting the Permanent Bureau to establish a Working Group, composed of judges, Central Authorities, and cross-disciplinary experts to develop a Guide to Good Practice on this area, with a component to provide guidance specifically directed to judicial authorities, taking into account the Conclusions and Recommendations of past Special Commission meetings and Guides to Good Practice.

ANNEXE / ANNEX

**Special Commission on the
practical operation of the
1980 and 1996 Hague Conventions
(1-10 June 2011)**



Conclusions and Recommendations

adopted by the Special Commission

New Contracting States

1. The Special Commission welcomes the increase since the 2006 meeting of the Special Commission in the number of Contracting States to the 1980¹ (from 76 to 85) and 1996² (from 13 to 32) Conventions, and the number of States that have signed the 1996 Convention (7). The Special Commission calls for further efforts by Contracting States and by the Permanent Bureau, through the provision of advice and assistance, to extend the numbers of Contracting States.
2. The Special Commission suggests that an informal network of experts be arranged to discuss strategies and challenges in the implementation of the 1996 Convention, for example, with discussion carried out through a "listserv" (a closed electronic list).

Central Authority co-operation and communication under the 1980 Convention

3. Efforts should be made to ensure that Central Authorities act as a focal point for the provision of services or the carrying out of functions contemplated under Article 7 of the 1980 Convention. When the Central Authority does not itself provide a particular service or carry out a particular function, it should preferably itself engage the body which provides that service or carries out that function. Alternatively, the Central Authority should at least make available information regarding the body, including how to make contact with the body.
4. The Special Commission re-emphasises the crucial importance of the Central Authorities' active role in locating the child who has been wrongfully removed or retained. Where the measures to discover the whereabouts of the child within a Contracting State are not taken directly by the Central Authority but are taken by an intermediary, the Central Authority should remain responsible for expediting communications with the intermediary and informing the requesting State of the progress of efforts to locate the child, and should continue to be the central channel for communication in this regard.
5. Contracting States that have not already done so are asked to provide their Central Authorities with sufficient powers to request, where needed for the purpose of locating the child, information from other governmental agencies and authorities, including the police and, subject to law, to communicate such information to the requesting Central Authority.
6. The Special Commission draws attention to the serious consequences for the operation of the 1980 Convention of failure to inform the Permanent Bureau promptly of changes in the contact details of Central Authorities. In addition, the Permanent Bureau should undertake to remind Central Authorities of their duty in this respect once a year.

¹ The *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter, the "1980 Convention").

² 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* (hereinafter, the "1996 Convention").

7. The Special Commission re-emphasises the need for close co-operation between Central Authorities in the processing of applications and the exchange of information under the 1980 Convention, and draws attention to the principles of “prompt responses” and “rapid communication” set out in the *Guide to Good Practice under the 1980 Convention – Part I – Central Authority Practice*.
8. The Special Commission welcomes the increasing co-operation within States between the member(s) of the International Hague Network of Judges and the relevant Central Authority resulting in the enhanced operation of the Convention.
9. Central Authorities are encouraged to continue to provide information about and facilitate direct judicial communications including, where there are language difficulties, through the provision of translation services where appropriate and feasible.
10. The Special Commission encourages the Permanent Bureau to continue its work (described in Info. Doc. No 4) to modernise the recommended Request for Return model form and to create a form that can be completed electronically. The Special Commission also requests that the Permanent Bureau continue its work to develop a standardised Request for Access form. The Special Commission requests that different language versions of the forms should be made available on the Hague Conference website. For this purpose, States are encouraged to provide the Permanent Bureau with translations.
11. The Special Commission encourages the use of information technology with a view to increasing the speed of communication and improving networking between Central Authorities.
12. The requesting Central Authority should ensure that the application is complete. In addition to the essential supporting documents, it is recommended that any other complementary information that may facilitate the assessment and resolution of the case accompany the application.
13. The Special Commission re-emphasises that –
 - (a) in exercising their functions with regard to the acceptance of applications, Central Authorities should respect the fact that evaluation of factual and legal issues (such as habitual residence, the existence of rights of custody, or allegations of domestic violence) is, in general, a matter for the court or other competent authority deciding upon the return application;
 - (b) the discretion of a Central Authority under Article 27 to reject an application when it is manifest that the requirements of the Convention are not fulfilled or that the application is otherwise not well founded should be exercised with extreme caution. The requested Central Authority should not reject an application solely on the basis that additional documents or information are needed. Close co-operation between the Central Authorities involved to ensure that relevant documentation is made available and to avoid undue delay in processing applications is strongly encouraged. The requested Central Authority may ask the requestor to provide these additional documents or information. If the requestor does not do so within a reasonable period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application.
14. Central Authorities are reminded of the valuable role that the Country Profile for the 1980 Convention is expected to play in enabling States to exchange information on the requirements for making an application in the requested State.
15. The Special Commission welcomes the increasingly important role played by Central Authorities in international child abduction cases to bring about an amicable resolution of the issues including through mediation. At the same time, the Special Commission recognises that the use of measures to this end should not result in delay.

16. The requested Central Authority should, as far as possible, keep the requesting Central Authority informed about the progress of proceedings and respond to reasonable requests for information from the requesting Central Authority. When the requested Central Authority has knowledge of a judgment or decision made in return or access proceedings, it should promptly communicate the judgment or decision to the requesting Central Authority, together with general information on timelines for any appeal, where appropriate.

Rights of access / contact cases in the context of the 1980 Convention and / or 1996 Convention

17. The Special Commission notes that in many Contracting States to the 1980 Convention applications concerning access under Article 21 are now processed in the same way as applications for return.

18. Central Authorities designated under the 1980 and / or 1996 Conventions are encouraged to take a pro-active and hands-on approach in carrying out their respective functions in international access / contact cases.

19. The Special Commission reaffirms the principles set out in the *General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children* and strongly encourages Contracting States to the 1980 and 1996 Conventions to review their practice in international access cases in light of these principles, where necessary.

20. The Special Commission recognises that, pursuant to Articles 7(2) *b*) and 21 of the 1980 Convention, during pending return proceedings a requested Contracting State may provide for the applicant in the return proceedings to have contact with the subject child(ren) in an appropriate case.

Statistics relating to the 1980 Convention

21. The Special Commission acknowledges the great value of the "Statistical analysis of applications made in 2008 under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*" (Prel. Doc. No 8) carried out by Nigel Lowe and Victoria Stephens, and notes the increase in the number of Hague return applications, the marginally lower proportion of returns and the apparent increase in the time taken to conclude Hague return proceedings.

22. The Special Commission reaffirms Recommendation No 1.14 of the 2001 meeting of the Special Commission and Recommendation No 1.1.16 of the 2006 meeting of the Special Commission –

"Central Authorities are encouraged to maintain accurate statistics concerning the cases dealt with by them under the Convention, and to make annual returns of statistics to the Permanent Bureau in accordance with the standard forms established by the Permanent Bureau in consultation with Central Authorities."

23. The Special Commission recommends that one statistical questionnaire be developed that is capable of being completed online, and that combines the data currently sought for INCASTAT (the International Child Abduction Statistical Database) with the data last sought for the statistical analysis of cases arising in 2008. The Special Commission recommends that the Permanent Bureau, in conjunction with certain interested States Parties, explore the possibility of automated data migration to INCASTAT.

Country Profile for the 1980 Convention

24. The Special Commission welcomes the development of the Country Profile for the 1980 Convention and the important improvement it makes to the exchange of information between Central Authorities.

25. All Contracting States that have not yet completed the Country Profile are strongly encouraged to do so as soon as possible.

26. The Special Commission recommends that Contracting States regularly update their Country Profile to ensure that the information remains current. The Permanent Bureau will send an annual reminder to Contracting States in this regard.

27. The Country Profile does not replace the Standard Questionnaire for Newly Acceding States. However, all newly acceding and ratifying States are encouraged to complete the Country Profile as soon as possible following their accession to or ratification of the 1980 Convention.

Information and training visits for newly acceding / ratifying States and States considering accession to or ratification of the 1980 Convention

28. Immediately following a State becoming Party to the 1980 Convention (or, in an appropriate case, where a State is preparing to do so or has expressed a strong interest in doing so), the State in question should be offered, by way of a standard letter from the Permanent Bureau, the opportunity to visit an experienced Contracting State to the 1980 Convention for the purpose of gaining knowledge and understanding regarding the effective practical operation of the 1980 Convention.

29. The Permanent Bureau will maintain a list of all experienced Contracting States willing to accept such a visit and, when a newly acceding / ratifying (or interested) State responds positively to an offer, will provide details of Contracting States prepared to receive the newly acceding / ratifying (or interested) State for the two States concerned to organise and arrange the visit.

Immigration issues in the context of the 1980 Convention

30. In order to prevent immigration issues from obstructing the return of the child, Central Authorities and other competent authorities should where possible clarify the child's nationality and whether the child is in possession of the necessary travel documents as early as possible during the return procedure. When making a contact order, judges should bear in mind that there might be immigration issues that need to be resolved before contact can take place as ordered.

31. Where there is any indication of immigration difficulties which may affect the ability of a (non-citizen) child or taking parent to return to the requesting State or for a person to exercise contact or rights of access, the Central Authority should respond promptly to requests for information to assist a person in obtaining from the appropriate authorities within its jurisdiction without delay such clearances or permissions (visas) as are necessary. States should act as expeditiously as possible when issuing clearances or visas for this purpose and should impress upon their national immigration authorities the essential role that they play in the fulfilment of the objectives of the 1980 Convention.

Access to justice in the context of the 1980 Convention

32. The Special Commission highlights the importance of ensuring effective access to justice for both parties in return and access proceedings, as well as for the child where appropriate, while recognising that the means of ensuring such effective access may vary from State to State, particularly for Contracting States that have made a reservation under Article 26 of the Convention.

33. The Special Commission emphasises that the difficulty in obtaining legal aid at first instance or an appeal, or of finding an experienced lawyer for the parties, may result in delays and may produce adverse effects for the child as well as for the parties. The important role of the Central Authority in helping an applicant to obtain legal aid quickly or to find experienced legal representatives is recognised.

34. The Special Commission acknowledges the importance of ensuring effective access to justice for both parties, as well as the child where appropriate, in custody proceedings following the return of the child, while recognising that the means of ensuring such effective access may vary from State to State.

Domestic and family violence in the context of the 1980 Convention

35. The Special Commission notes that a large number of jurisdictions are addressing issues of domestic and family violence as a matter of high priority including through awareness raising and training.

36. Where Article 13(1) *b*) of the 1980 Convention is raised concerning domestic or family violence, the allegation of domestic or family violence and the possible risks for the child should be adequately and promptly examined to the extent required for the purposes of this exception.

37. The Special Commission affirms its support for promoting greater consistency in dealing with domestic and family violence allegations in the application of Article 13(1) *b*) of the 1980 Convention.

38. The Special Commission considered three proposals for future work with a view to promoting consistency in the interpretation and application of Article 13(1) *b*) of the 1980 Convention, and in the treatment of issues of domestic and family violence raised in return proceedings under the Convention. These were –

- (a) a proposal that includes, among others, the drafting of a Guide to Good Practice on the implementation of Article 13(1) *b*) (Work. Doc. No 1);
- (b) a proposal to establish a working group, drawn in particular from the International Hague Network of Judges, to consider the feasibility of developing an appropriate tool to assist in the consideration of the grave risk of harm exception (Work. Doc. No 2);
- (c) a proposal to establish a group of experts, including in particular judges, Central Authority experts and experts in the dynamics of domestic violence, to develop principles or a practice guide on the management of domestic violence allegations in Hague return proceedings (Prel. Doc. No 9, para. 151).

Further consideration of these proposals was deferred until Part II of the meeting of the Special Commission.

Facilitating the safe return of the child and the accompanying parent, where relevant (1980 and 1996 Conventions)

39. The Special Commission recognises the value of the assistance provided by the Central Authorities and other relevant authorities, under Articles 7(2) *d*), *e*) and *h*) and 13(3), in obtaining information from the requesting State, such as police, medical and social workers' reports and information on measures of protection and arrangements available in the State of return.

40. The Special Commission also recognises the value of direct judicial communications, in particular through judicial networks, in ascertaining whether protective measures are available for the child and the accompanying parent in the State to which the child is to be returned.

41. It was noted that the 1996 Convention provides a jurisdictional basis, in cases of urgency, for taking measures of protection in respect of a child, also in the context of return proceedings under the 1980 Convention. Such measures are recognised and may be declared enforceable or registered for enforcement in the State to which the child is returned provided that both States concerned are Parties to the 1996 Convention.

42. In considering the protection of the child under the 1980 and 1996 Conventions regard should be given to the impact on a child of violence committed by one parent against the other.

43. The Special Commission welcomes the decision of the 2011 Council on General Affairs and Policy of the Hague Conference "to add to the Agenda of the Conference the topic of the recognition of foreign civil protection orders made, for example, in the context of domestic violence cases, and ... [to instruct] the Permanent Bureau to prepare a short note on the subject to assist the Council in deciding whether further work on this subject is warranted." The Special Commission recommends that account should be taken of the possible use of such orders in the context of the 1980 Convention.

Rights of custody (1980 Convention)

44. The Special Commission reaffirms that Convention terms such as "rights of custody" should be interpreted having regard to the autonomous nature of the Convention and in the light of its objectives.

45. In relation to the autonomous Convention meaning of the term "rights of custody", the Special Commission takes notice of *Abbott v. Abbott*, 130 S.Ct. 1983 (2010), which supports the view that a right of access combined with a right to determine the residence of the child constitutes a "right of custody" for the purposes of the Convention and acknowledges that it is a significant contribution towards achieving consistency on an international level regarding its interpretation.

46. The Special Commission recognises the considerable utility of the Country Profile and direct judicial communications in helping to determine the law of the State of the child's habitual residence for the purpose of establishing whether an applicant in return proceedings has "rights of custody" within the meaning of the Convention.

Jurisprudence of the European Court of Human Rights (1980 Convention)

47. The Special Commission notes that the European Court of Human Rights has in decisions taken over many years expressed strong support for the 1980 Convention, typified by a statement made in the case of *Maumousseau and Washington v. France* (No 39388/05, ECHR 2007 XIII) that the Court was "entirely in agreement with the philosophy underlying the Hague Convention".

48. The Special Commission notes the serious concerns which have been expressed in relation to language used by the court in its recent judgments in *Neulinger and Shuruk v. Switzerland* (Grand Chamber, No 41615/07, 6 July 2010) and *Raban v. Romania* (No 25437/08, 26 October 2010) in so far as it might be read "as requiring national courts to abandon the swift, summary approach that the Hague Convention envisages, and to move away from a restrictive interpretation of the Article 13 exceptions to a thorough, free-standing assessment of the overall merits of the situation" (per the President of the European Court of Human Rights, extra-judicially (Info. Doc. No 5)).

49. The Special Commission notes the recent extrajudicial statement made by the President of the European Court of Human Rights (see above) in which he states that the decision in *Neulinger and Shuruk v. Switzerland* does not signal a change of direction for the court in the area of child abduction, and that the logic of the Hague Convention is that a child who has been abducted should be returned to the State of his / her habitual residence and it is only there that his / her situation should be reviewed in full.

The child's voice / opinions in return and other proceedings (1980 and 1996 Conventions)

50. The Special Commission welcomes the overwhelming support for giving children, in accordance with their age and maturity, an opportunity to be heard in return proceedings under the 1980 Convention independently of whether an Article 13(2) defense has been raised. The Special Commission notes that States follow different approaches in their national law as to the way in which the child's views may be obtained and introduced into the proceedings. At the same time the Special Commission emphasises the importance of ensuring that the person who interviews the child, be it the judge, an independent expert or any other person, should have appropriate training for this task where at all possible. The Special Commission recognises the need for the child to be informed of the ongoing process and possible consequences in an appropriate way considering the child's age and maturity.

51. The Special Commission notes that an increasing number of States provide for the possibility of separate legal representation of a child in abduction cases.

Guides to Good Practice (1980 and 1996 Conventions)

52. The Special Commission recognises the value of all parts of the Guide to Good Practice under the 1980 Convention and the *General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children* under the 1980 and 1996 Conventions. It encourages the wide dissemination of the Guides. The Special Commission encourages States to consider how best to disseminate the Guides within their States and, in particular, to the persons involved in implementing and operating the Conventions.

The Practical Handbook on the 1996 Convention

53. The Special Commission welcomes the revised Draft Practical Handbook on the 1996 Convention (Prel. Doc. No 4) as a valuable document which provides beneficial guidance to persons involved in implementing and operating the Convention.

54. The Special Commission recommends that the Permanent Bureau, in consultation with experts, make amendments to the revised Draft Practical Handbook, in light of the comments provided at the Special Commission meeting.

55. The Special Commission looks forward to the publication of the Practical Handbook on the 1996 Convention following this final revision process.

INCADAT (the International Child Abduction Database) and INCASTAT: extension to the 1996 Convention

56. The Special Commission recognises the great value of INCADAT and welcomes further exploration of the extension of INCADAT to the 1996 Convention. The Special Commission suggests further exploration of the desirability and feasibility of the extension of INCASTAT to the 1996 Convention.

Mediation

57. The Special Commission notes the many developments in the use of mediation in the context of the 1980 Convention.

58. The Special Commission welcomes the draft Guide to Good Practice on Mediation under the 1980 Convention. The Permanent Bureau is requested to make revisions to the Guide in light of the discussions of the Special Commission, taking account also of the advice of experts. Consideration will be given to the inclusion of examples of mediated agreements. The revised version will be circulated to Members and Contracting States for final consultations.

59. The Guide will be published in a form which allows updating.

60. The Special Commission expresses appreciation for the work carried out by the Working Party on Mediation in the context of the Malta Process and welcomes the *Principles for the establishment of mediation structures in the context of the Malta Process* (Prel. Doc. No 6).

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.

62. The Special Commission notes the request of the 2011 Council on General Affairs and Policy of the Hague Conference that the Working Party should continue to work on the implementation of mediation structures and, in particular, with the support of the Permanent Bureau, and in light of discussions in the Special Commission –

- “to facilitate wider acceptance and implementation of the Principles as a basic framework for progress;
- to consider further elaboration of the Principles; and,
- to report to the Council in 2012 on progress”. (See the Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (5-7 April 2011).)

Article 15 of the 1980 Convention

63. The Special Commission records the problems, including delays, that were identified in the operation of Article 15. It recommends that the Permanent Bureau give further consideration to the steps which may be taken to ensure a more effective application of the Article.

Judicial communications (1980 Convention)

64. The Special Commission welcomes the extraordinary growth in the International Hague Network of Judges in the period from 2006 to 2011 which now includes more than 65 judges from 45 States. States that have not yet designated Hague Network judges are strongly encouraged to do so.

65. The Special Commission also welcomes the actions taken by States and regional organisations nationally and regionally regarding the establishment of judicial networks and the promotion of judicial communications.

66. The Special Commission emphasises the importance of direct judicial communications in international child protection and international child abduction cases.

Respective roles of judges and Central Authorities

67. The Special Commission reaffirms Recommendations Nos 1.6.4 and 1.6.5 of the 2006 meeting of the Special Commission –

“The Special Commission recognises that, having regard to the principle of the separation of powers, the relationship between judges and Central Authorities can take different forms.

The Special Commission continues to encourage meetings involving judges and Central Authorities at a national, bilateral or multilateral level as a necessary part of building a better understanding of the respective roles of both institutions.”

Emerging Guidance and General Principles for Judicial Communications

68. The Special Commission gives its general endorsement to the Emerging Guidance and General Principles for Judicial Communications contained in Preliminary Document No 3 A, subject to the Permanent Bureau revising the document in light of the discussions within the Special Commission.

Legal basis for direct judicial communications

69. Where there is concern in any State as to the proper legal basis for direct judicial communications, whether under domestic law or procedure, or under relevant international instruments, the Special Commission invites States to take the necessary steps to ensure that such a legal basis exists.

70. The Special Commission notes that the question of the desirability and feasibility of binding rules in this area, including a legal basis, will be considered during Part II of the Sixth Meeting of the Special Commission.

Effective secured electronic communications

71. The Special Commission notes the exploratory work of the Permanent Bureau regarding the implementation of a pilot project for effective secured electronic communications, in particular for members of the International Hague Network of Judges.

Actions to be undertaken by the Permanent Bureau

72. In relation to future work, the Permanent Bureau in the light of the observations made during the meeting will –

- (a) explore further the development of secured systems of communications, such as secured video-conferencing, in particular for members of the International Hague Network of Judges;
- (b) continue to develop contacts with other judicial networks, to promote the establishment of regional judicial networks, as well as consistency in the safeguards applied in relation to direct judicial communications;
- (c) continue to maintain an inventory of existing practices relating to direct judicial communications in specific cases under the 1980 Convention and with regard to international child protection; and,
- (d) draw up a short information document for judges on direct judicial communications.

The Judges' Newsletter on International Child Protection

73. The Special Commission supports the continued publication of *The Judges' Newsletter on International Child Protection* and expresses its appreciation to LexisNexis for its support in publishing and distributing the Newsletter.

74. The Special Commission urges that every effort should be made to make the Newsletter available in Spanish and encourages States to consider providing support for this purpose.

Conferences

75. The Special Commission re-emphasises the importance of inter-disciplinary judicial conferences and seminars and the contribution they make to the effective functioning of the 1980 and 1996 Conventions. The Special Commission encourages States to support and provide continued funding for such meetings and other meetings in support of the consistent application of the Conventions.

**Special Commission on the
practical operation of the
1980 and 1996 Hague Conventions
(25-31 January 2012)**



Conclusions and Recommendations (Part II)

adopted by the Special Commission

Recognition and enforcement of agreements

76. Recognising that, in the course of international child disputes, the parties may enter into agreements settling their dispute, the Special Commission recommends that exploratory work be undertaken to identify legal and practical problems that may exist in the recognition and enforcement abroad of such agreements, taking into account the implementation and use of the 1996 Convention.

77. To this end, the Special Commission recommends that the Council on General Affairs and Policy consider authorising the establishment of an Expert Group to carry out further exploratory research, which would include identification of the nature and extent of the legal and practical problems in this area, including, specifically, jurisdictional issues and would evaluate the benefit of a new instrument in this area, whether binding or not.

Direct judicial communications

78. The Special Commission supports that consideration be given to the inclusion of a legal basis for direct judicial communications in the development of any relevant future Hague Convention.

79. In relation to future work, the Special Commission recommends that the Permanent Bureau:

- (a) promote the use of the *Emerging Guidance and General Principles on Judicial Communications*;
- (b) continue to encourage the strengthening and expansion of the International Hague Network of Judges; and
- (c) maintain an inventory of domestic legal bases relating to direct judicial communications.

Article 13(1) b) of the 1980 Convention, including allegations of domestic and family violence

80. The Special Commission notes that the evaluation of the evidence and the determination of the grave risk of harm exception (Art. 13(1) b)), including allegations of domestic violence, are an exclusive matter for the authority competent to decide on the return, having due regard to the aim of the 1980 Convention to secure the prompt and safe return of the child.

81. The Special Commission recommends that further work be undertaken to promote consistency in the interpretation and application of Article 13(1) b) including, but not limited to, allegations of domestic and family violence.

82. The Special Commission recommends that the Council on General Affairs and Policy authorise the establishment of a Working Group composed of judges, Central Authorities and cross-disciplinary experts to develop a Guide to Good Practice on the interpretation and application of Article 13(1) *b*), with a component to provide guidance specifically directed to judicial authorities, taking into account the Conclusions and Recommendations of past Special Commission meetings and Guides to Good Practice.

International family relocation

83. The Special Commission recognises that the Washington Declaration¹ provides a valuable basis for further work and reflection.

84. The Special Commission notes support for further work being undertaken to study and gather information concerning the different approaches adopted in various legal systems to international family relocation, in relation to private international law issues and the application of the 1996 Convention.

85. Recognising the value of the 1996 Convention to international family relocation, States that have not yet done so are encouraged to consider ratification of or accession to the Convention.

The Malta Process

86. The Special Commission supports the general continuation of the Malta Process and a Fourth Malta Conference and suggests that future emphasis be placed on the involvement of government representatives in the Process.

The services and strategies provided by the Hague Conference on Private International Law in relation to the 1980 and 1996 Conventions

87. The Special Commission recommends that the Hague Conference on Private International Law, through its Permanent Bureau, continue its current work to support the effective practical operation of the 1980 and 1996 Conventions and, in this regard, the Permanent Bureau should:

- (a) focus on the promotion, implementation and effective practical operation of the 1980 and 1996 Conventions;
- (b) encourage regional activities including conferences, seminars and training;
- (c) where requests for assistance are received from individuals, provide general information concerning the relevant competent authority(ies); and
- (d) consider ways to enhance further the effectiveness of Special Commission meetings to review the practical operation of the 1980 and 1996 Conventions.

88. The Special Commission notes the strong support for the continuing work in strengthening the Latin American Regional Office and in developing a Regional Office in the Asia Pacific region.

89. The Special Commission takes note of the report of Professor McEleavy (INCADAT Legal Consultant) which, in answering concerns expressed as to the quality of the database, stressed that continued enhancements are being made to INCADAT but that future improvements are subject to available resources.

¹ Resulting from the International Judicial Conference on Cross-Border Family Relocation held in Washington, D.C., United States of America from 23 to 25 March 2010, co-organised by the Hague Conference on Private International Law and the International Centre for Missing and Exploited Children, with the support of the United States Department of State.

90. The Special Commission takes note of Information Document No 7 on the expansion of INCASTAT and acknowledges that work should continue subject to supplementary funding.
91. The Special Commission welcomes the continuing work on iChild carried out by the Hague Conference and WorldReach Canada.
92. The Special Commission agrees that the Hague Conference will not continue its work on the model consent to travel form (Prel. Doc. No 15) and that the Permanent Bureau should inform ICAO of this decision.