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**RAPPORT ET CONCLUSIONS DE LA COMMISSION SPECIALE CONCERNANT
LA CONVENTION DE LA HAYE DU 25 OCTOBRE 1980
SUR LES ASPECTS CIVILS DE L'ENLEVEMENT INTERNATIONAL D'ENFANTS
27 SEPTEMBRE – 1 OCTOBRE 2002**

établis par le Bureau Permanent

* * *

**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**

submitted by the Permanent Bureau

*Document préliminaire No 5 de mars 2003
à l'intention de la Commission spéciale d'avril 2003
sur les affaires générales et la politique de la Conférence*

*Preliminary Document No 5 of March 2003
for the attention of the Special Commission of April 2003
on General Affairs and Policy of the Conference*

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2. INTRODUCTION

2.1 Terms of reference, representation and chairmanship

1. The Special Commission concerning the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*¹ met in the Academy Building of the Peace Palace in The Hague from 27 September to 1 October 2002, pursuant to the recommendation adopted by Commission I of the Nineteenth Diplomatic Session of the Hague Conference on Private International Law. This recommendation reads as follows:

"Commission I recommends that the Secretary-General convene a Special Commission to be held in September / October 2002 to follow-up on matters arising from the Fourth 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, which was held in March 2001. The principal item on the Agenda will be consideration, with a view to approval, of the first two sections (Central Authority practice and implementing measures) of the Guide to Good Practice. There will also be initial discussion of the Permanent Bureau's final report on Transfrontier Access/Contact, as well as a Permanent Bureau report on direct international judicial communications in the context of the 1980 Convention."

2. This Commission differed from the four-yearly reviews of the Convention in that it had a specific mandate to consider the draft Guide to Good Practice, the Permanent Bureau's final report on transfrontier access / contact including a preliminary discussion of transfrontier access / contact issues relating to some Islamic States, and a report on direct international judicial communications in the context of the Convention.

3. Of the 47 States represented, 44 were Parties to the 1980 Convention, (seven being non-Member States of the Hague Conference), and the other three were Member States of the Hague Conference not yet Parties to the Convention. In addition, three intergovernmental organisations and 12 non-governmental organisations were present as observers.

4. The Special Commission was opened by Mr Teun Struycken, Chairman of the Netherlands Standing Committee on Private International Law. He proposed Mrs Justice Catherine McGuinness (Ireland) as the chair of the meeting, who was elected unanimously by the Commission. The Permanent Bureau acted as Reporter.

2.2 Preliminary Documents and Agenda

5. Eleven Preliminary Documents were prepared for the Commission, seven of which had been previously circulated to participants.

6. Preliminary Document No 1, Consultation Paper on Transfrontier Access / Contact drawn up by William Duncan, Deputy Secretary General was sent out to National Organs in January 2002.

7. Preliminary Document No 2, Questionnaire concerning practical mechanisms for facilitating direct international judicial communications in the context of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, drawn up by William Duncan, Deputy Secretary General was sent out to National Organs in January 2002.

8. Preliminary Document No 3, Guide to Good Practice under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Part I - Central Authority Practice, drawn up by the Permanent Bureau was made available on the Internet in June 2002.

¹ *The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* [hereinafter the "Convention" or the "1980 Hague Convention"] (available at: <<http://www.hcch.net/e/conventions/menu28e.html>>). All "Articles" referred to are those of the 1980 Convention.

9. Preliminary Document No 4, Guide to Good Practice under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Part II - Implementing Measures, drawn up by the Permanent Bureau was made available on the Internet in July 2002.
10. Preliminary Document No 5, Transfrontier Access / Contact and the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Final Report, drawn up by William Duncan, Deputy Secretary General was made available on the Internet in July 2002.
11. Preliminary Document No 6, Practical Mechanisms for Facilitating Direct International Judicial Communications in the context of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Preliminary Report, drawn up by Philippe Lortie, First Secretary was made available on the Internet in August 2002.
12. Preliminary Document No 7, Bilateral Conventions and Islamic States, drawn up by the Permanent Bureau was made available on the Internet in August 2002.
13. Preliminary Document No 8, Responses received to the Consultation Paper on Transfrontier Access / Contact, and Preliminary Document No 9, Responses received to the Questionnaire concerning practical mechanisms for facilitating direct international judicial communications in the context of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, were made available on two disks distributed to the head of each delegation. Several copies of the complete set of responses, as well as the documents annexed, were made available for consultation to the participants during the Special Commission.
14. Preliminary Document No 10, Information Document drawn up by the Permanent Bureau and Preliminary Document No 11, Responses received to the Guide to Good Practice under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Part I - Central Authority Practice, drawn up by the Permanent Bureau were made available to participants at the meeting.
15. The Agenda adopted by the Special Commission reflected its mandate. The discussions concerned successively the Guide to Good Practice, Part I - Central Authority Practice, the Guide to Good Practice, Part II - Implementing Measures, Transfrontier Access / Contact including cases involving Islamic States and Judicial Communications. There was also a presentation by WorldReach Software concerning the International Child Abduction Statistical Database (INCASTAT). The Commission ended with a review and approval of the first two chapters of the Guide to Good Practice, a consideration of further elements to be included in the Guide, and approval of the conclusions set out in Working Document No 1. Finally, the Commission considered the Permanent Bureau's possible future programme of work concerning the 1980 Convention and the financial implications of this work.

3. CURRENT STATUS OF THE CONVENTION

16. The 1980 Hague Convention entered into force on 1 December 1983, and now has seventy-three States Parties.² The expanding geographical scope of the States Parties includes ratifying and acceding States from all continents.³ Indeed the increasing number of Contracting States to the Convention seems likely to continue at a steady pace - more than twenty-five States have become Party in the past five years alone.

² Updated as of 15 March 2003.

³ States that were Member States of the Hague Conference at the time the Convention was adopted (on 25 October 1980) may ratify the Convention; States that cannot sign and ratify may only accede. See Articles 37 and 38(1) respectively.

4. GUIDE TO GOOD PRACTICE: PART I: CENTRAL AUTHORITY PRACTICE

4.1 Background to developing the Guide to Good Practice

17. The development of the Guide to Good Practice Part I: Central Authority Practice and Part II: Implementing Measures, (Preliminary Document No 3 and Preliminary Document No 4 respectively) followed from Recommendation 1.16 of the March 2001 Special Commission which gave the following mandate:

"Contracting States to the Convention should co-operate with each other and with the Permanent Bureau to develop a Guide to Good Practice which expands on Article 7 of the Convention. This guide would be a practical, "how-to" guide, to help implement the Convention. It would concentrate on operational issues and be targeted particularly at new Contracting States. It would not be binding nor infringe upon the independence of the judiciary. The methodology should be left to the Permanent Bureau".

18. Mr Duncan explained the partnership process between the Permanent Bureau and the Contracting States, especially the Central Authorities which facilitated the production of Parts I and II of the Guide. There had been direct and individual consultation with Central Authorities and in April 2002 a meeting of 12 Central Authorities had been convened to comment on early drafts. Similarly, drafts had been widely circulated and comments received. He expressed appreciation to the Australian Government who had seconded Ms Jennifer Degeling, the head of the Australian Central Authority, to work for one year with the Permanent Bureau, primarily to work on Part I of the Guide.

19. Ms Degeling described the relevant considerations in preparing Part I on Central Authority practices. While the starting point had to be the Conclusions and Recommendations of the 2001 Special Commission, there were other important considerations in preparing the Guide. First, it was important to recognise the requirements or limitations of different legal systems, knowing that some suggested practices might be acceptable in certain jurisdictions but not in others, and Central Authorities must therefore select the guidelines that are appropriate for their jurisdiction. Second, it was necessary to take into account the needs and resources of developed and developing Central Authorities, while recognising that there are some guidelines that are so fundamentally important that even under-resourced or developing Central Authorities must try to achieve them as soon as the Convention enters into force, such as acknowledging and responding to requests for return. Third, it was necessary to ensure that the most important goals are achievable by small or developing Central Authorities, while recognising that some other suggestions for good practice will not be achievable by new or developing Central Authorities. Fourth, there should be emphasis on the gradual or incremental approach to improvement, where small improvements achievable over a period of time will have long-term benefits for all States.

20. The main objective in preparing a guide to good practice is to make it of practical use. This means that the most important principles should have universal application, the Guide should have a logical structure, it should be clearly expressed, the information should be accessible and easy to follow, and it should cover all aspects of Central Authority practice. The Guide should be relevant to small, medium or large Central Authorities, as well as those which are new and those which are well established.

4.2 Fundamental principles for approving and using the Guide

21. The Chair reminded delegates that the Guide is not an international treaty; it has no binding authority but is intended to show what Central Authorities should aspire to. The Chair emphasised that it was important not to cut down the Guide if not all Authorities were ably resourced to manage all the guidelines immediately. In effect, Central Authorities were encouraged to adopt "progressive implementation" of the Guide in the same spirit in which

“progressive implementation” of the Convention itself was adopted as a Key Operating Principle.

22. A suggestion was made that the introduction to the Guide should contain the observations made by the Chair, namely a clear statement that the Guide is not legally binding and that not all measures will perhaps be achievable by all Central Authorities. Working Document No 2, *Suggested amendments to the Guide to Good Practice Part I - Central Authority Practice*, proposed a form of words to this effect that was accepted by the meeting in the final session.

23. Several experts expressed their appreciation of the excellence of the Guide and commented on the importance of such a Guide not only for new Contracting States but also for well-established Central Authorities. Another representative expressed a plea that the Guide must strengthen the operation of the Convention and therefore must not reduce good practice to the lowest common denominator.

24. An expert endorsed the view put forward in Preliminary Document No 11, *Comments Received by the Permanent Bureau on the Guide to Good Practice Part I - Central Authority Practice*, which highlighted that the Guide should not be too detailed or too long, so as not to detract from its utility. Delegates were asked to bear this in mind when making suggestions for revisions or additions to the text.

25. The Appendices to the Guide (Preliminary Document No 3: Appendices) contain the Conclusions and Recommendations of previous Special Commissions, a summary of the obligations of Central Authorities under the Convention, some sample forms and letters considered to be examples of good practice, a list of measures taken by authorities to locate a child or to assist a safe return, the annual statistics reporting forms, and a list of publications and internet sites dealing with prevention issues. Central Authorities are invited to submit sample “good practice” documents for inclusion in the Guide’s Appendices at any time. The Appendices may be revised by the Permanent Bureau in order to ensure that its contents remain current and relevant.

4.3 Key Operating Principles

26. During the development of the Guide, the Permanent Bureau was drawn to the concept of using a number of overarching principles that would guide relevant authorities, agencies or actors in all aspects of the implementation and operation of the Convention. It was hoped that the principles might also guide Contracting States in planning or improving their implementing measures.

27. The Key Operating Principles formulated in the Guide are considered by the Permanent Bureau to be fundamental to the effective operation of the Convention. These Key Operating Principles should apply not only to Central Authorities but also to other bodies or persons involved in the Convention process. They are:

Adequate resources and powers for Central Authorities - are matters that Contracting States need to address in their Implementing Measures;

Good co-operation - is fundamental to the success of the Convention and is enhanced by good communication;

Good communication - between Central Authorities themselves, and between Central Authorities and other agencies, is essential for the effective operation of the Convention;

Consistency - in interpretation of Convention obligations, and use of the model form, improves understanding and co-operation;

Expeditious procedures - should be used at all stages of the Convention process by Central Authorities and others;

Transparency of process - builds understanding and confidence in the Convention process;

Progressive implementation - is the idea of continual improvement in all aspects of implementation of the Convention, not just for Central Authorities but for Contracting States as well.

28. Several experts commented on the usefulness of a set of operational principles to guide Central Authorities and others in implementing the Convention. It was generally understood that in applying these principles, the Central Authorities should do what they can to achieve a reasonable standard of efficiency according to their resources and within their administrative and legal systems. Additionally, the Guide suggests that well resourced Central Authorities could provide professional or material assistance to others, e.g. on the basis of a twinning arrangement or an exchange of personnel.

29. However, one expert queried the emphasis on resources and powers and its inclusion as a principle. She felt that the emphasis on resources could perhaps be counter-productive given that not all Central Authorities benefit from having access to certain methods of communication such as email. She suggested that it may be more beneficial to alter the order in the principles in the Guide.

30. The ensuing debate showed there was general agreement that the importance of resources and powers for the Central Authority, although not strictly speaking "a principle" but without which nothing could be achieved, meant that this Key Operating Principle remained as being fundamental to the success of the Convention. The proposal in Working Document No 2 that the order should be: resources and powers, co-operation, communication, consistency, expeditious procedures, transparency, progressive implementation, was accepted during the final session.

31. Several experts noted that speed is an essential element, but stressed that it is important to ensure that the pursuit of speed does not detract from the rights of all parties being respected and the requirements of due process, which must not be neglected. The proposal in Working Document No 2 that the words "expeditious procedures" be used instead of "speed" where appropriate throughout the Guide, was adopted.

32. The question was raised of other factors (such as difficulties in locating the child) which could cause delay but which may be beyond the control of the Central Authority. Some of these could be addressed as education and training issues, while others may be dealt with in implementing measures. An example was given by an expert from Cyprus who indicated that the Supreme Court of Cyprus had introduced changes on 2 May 2002 modifying its procedural rules to shorten the time allowed to file certain proceedings to 7 days and for appeal to 14 days (a reduction by half in the first case and by two-thirds in the second case).

33. Poor communication can be a source of delay in procedure and therefore it is important that Central Authorities keep themselves informed of all developments, especially during the legal proceedings. An expert noted that confidentiality of information should be respected. However, the reality is that confidentiality cannot be guaranteed outside one's own jurisdiction, and a new paragraph 1.3 was inserted in the Guide to indicate that the applicant should be aware that confidentiality of personal information cannot always be guaranteed in the requested country's administrative and legal procedures, particularly when email communications are being used.

34. An expert underlined the importance of section 1.3.4 according to which the Central Authorities should provide information on their practice and the procedure to each Contracting State. The proposal was adopted from Working Document No 2 that it could be useful to provide a general information note to accompany an acknowledgement of each application in order to enable the requesting Central Authority to understand the procedure in the requested State and to adapt their expectations accordingly (see section 4.4).

4.4 Establishing and consolidating the Central Authority

35. It is widely accepted that co-operation between Central Authorities is the lynchpin in the success of the Convention. However, there have been situations where countries have joined the Convention and either have not designated a Central Authority, or if designated, the Central Authority has been given no powers or resources to carry out its functions, often because essential implementing legislation has not been passed.

36. For this reason, the Guide gives emphasis to why and when the Central Authority should be established and how it may be consolidated. In addition to asking "why and when", Chapter 2 also asks "where, who, and what" are required as essential elements in establishing and consolidating a Central Authority. While the Guide contains a range of suggested practices for small, medium and large Central Authorities, it should be recognised that what is possible or appropriate for one is not always possible or appropriate for another.

37. Several experts noted the importance of the designation of a "central" Central Authority in Federal States. One view was that these "central" Central Authorities should have a co-ordinating role to ensure the achievement of consistent and effective communication. Other experts stated that the Guide to Good Practice could not obligate Central Authorities to have this co-ordinating role as their powers might be governed by constitutional or legislative provisions. Article 6 of the Convention is very clear on this point, and gives States the discretion to organise their Central Authorities and to determine their role. The Guide should therefore limit itself to encouraging co-operation and communication without having to go beyond this.

38. An observer emphasised the necessity of adequate training for relevant authorities, notably the police, in order to achieve effective operation of the Convention. At the moment there is an absence of training for the police in some jurisdictions, consequently they do not necessarily understand their role in Convention matters. The Chair stated that the relationship between these two authorities is complicated and depends on domestic law, but too often such relationships only operate on a personal and voluntary level. This subject was debated at greater length during the discussion on education and training in Chapter 6.

39. Several experts indicated that it was helpful to have a lawyer within the Central Authority, or at least someone with legal training and good knowledge of the Convention and the relevant domestic procedures and implementing measures. Again, this is a question which may be governed by internal law in individual States and it is therefore impossible for the Guide to interfere on this issue. In the absence of a lawyer in the Central Authority, personnel could get advice or guidance on legal matters from other lawyers in their agency, on an *ad hoc* basis. A proposal to this effect in Working Document No 2 to revise paragraph 2.4.2 was accepted during the final session.

40. An expert added that Central Authorities have a role to play in disseminating information to other authorities and social workers. Several observers highlighted the importance of providing information to left-behind parents. They recognised that specialist non-Governmental organisations were in a position to usefully provide information to parents and that they could collaborate with Central Authorities. Paragraph 2.4.3 was revised to encourage Central Authorities to try if possible to form links with non-governmental organisations and national or regional law associations.

4.5 Central Authority procedures for abduction applications

41. The Guide attempts to describe the operational procedures of Requesting and Requested Central Authorities from beginning to end of a typical application for return of a child, including post return issues. Although processes and procedures will vary in different countries, the Guide sets out recommendations for good practice that can be adapted for most situations.

4.5.1 Role of the Requesting Central Authority (outgoing abduction applications)

4.5.1.1 Hand written applications

42. Section 3.2 (check that the application is complete and in an acceptable form for the requested country) was the subject of a short debate. It was said that the need for a signature on an application, which has been retyped by the Central Authority even when the handwritten application has been previously signed, could perhaps waste time in their jurisdictions. However in certain jurisdictions there are strict rules concerning the form of documentation and these cannot be ignored. One solution was to attach a copy of the original handwritten form with the signature to the typed form in order to satisfy these requirements.

4.5.1.2 Article 15 declarations

43. Several experts indicated that Article 15 of the Convention is interpreted very restrictively in their jurisdictions because Article 15 declarations are only accepted if they come from the courts (Israel, China – Hong Kong Special Administrative Region). The Deputy Secretary General pointed out that the Convention leaves open the question of which authorities can make an Article 15 declaration and that practice showed that the position in different States varied on this point.

4.5.1.3 Safe return of the child

44. It was suggested that section 3.20 (ensuring agreed arrangements are in place when the child returns) include a reference to the welfare of a child after its return, as the automatic local involvement of social services was desirable to promote the welfare of a child which has suffered the trauma of abduction. An expert from South Africa noted that the Central Authority and the custodial body in South Africa were the same, so that there was immediate involvement of the Office of Family Advocate, social services, and lawyers in all return proceedings. However, such close connection was unusual and it is really a question of where the Central Authority is located.

45. An expert from France observed that the French Central Authority had recently appointed a social worker specialising in the protection of children to work at the Central Authority. She explained that this person intervened directly with social welfare services and other departments following the cases of endangered children. She reported that the results of this new system had been quite positive and suggested that other States might wish to assemble similar multidisciplinary teams.

46. The Deputy Secretary General emphasised the importance of the Conclusions and Recommendations made by the Fourth Special Commission Meeting of March 2001 with regard to the protection of children, in particular Recommendation 1.13. He observed that this same issue had been discussed during the Special Commission meeting of 1997, and that the recommendations of the Special Commission of 2001 represented an important compromise. He stated that recommendations such as this were the point of departure for the Guide to Good Practice and should not be revisited.

4.5.1.4 Translation of documents

47. There was general agreement on the necessity and importance of possessing an accurate translation of all documents relating to requests, including summaries of judicial decisions. Often these decisions were not translated. A poorly translated, incomprehensible request leads to delays in the processing of applications and in legal proceedings.

48. The Chair indicated that the translation issue was fundamental, and that it depended on the resources available to the State. Not all Central Authorities had access to specific services connected to their offices. A representative also observed that it was sometimes difficult to find qualified translators in the requesting State to translate the necessary

documents into the language of the requested State. However, the requesting Central Authority should provide, at the very least, a translation into one of the official languages of the Hague Conference (English and French). This was the responsibility of the applicant.

49. An expert from Israel noted that in her country the legal aid provided to parents covered the translation of documents essential to the request. If the parents were not eligible for legal aid, the request would be translated by the Central Authority.

4.5.1.5 Providing additional information promptly

50. In relation to section 3.11, applications prepared by the parent himself or herself without professional assistance were often of poor quality, incomplete and ill-supported. Additional information then had to be obtained from the requesting State, leading to delays in the processing of the application.

51. Several experts observed that their Central Authorities assisted applicants in completing the application forms. This assistance varied among the States. In some States, applicants who had requested assistance received it directly from the district court, and it was the judge who assisted them in the procedures. In others, it was the Central Authority itself that assisted the applicant. The parent could also request assistance from an attorney.

52. It was noted that in some countries such as Ireland and the United Kingdom, legal aid for the applicant was direct and automatic. However, it was rare for the abducting parent to receive such aid.

4.5.2 Role of the Requested Central Authority (incoming abduction applications)

4.5.2.1 Locating the child

53. In relation to section 4.10, an expert observed that in some cases where the authority in charge of the protection of the child deemed it necessary, the requested Central Authority should not reveal the geographical location of the child to the applicant. Only the attorney should be informed of the child's residence. However, another view was that if the requested Central Authority did not transmit information on the child's location, this would be considered obstruction. It was suggested by one observer that in very complicated cases, the only way to locate the child was for the parent to travel to the requested State in order to deal with the local authorities. In difficult cases Central Authorities might assist by providing information concerning other locating resources available in their country when the child could not be located through the police or specialised organisations.

54. The Chair and several experts noted that the process of locating the child through the police and other judicial authorities was more difficult when the abduction of the child was not criminalised by the State. The Chair noted that in some countries, courts could require family members to provide information concerning the presence of the child in the State.

55. Several experts emphasised the existence of effective collaboration among national police, Interpol, and judicial authorities in efforts to locate children. They insisted on the importance of complete information and the necessity of properly informing the police and Interpol. In Canada, Israel and Switzerland, liaison officers to the police have been designated to assure communication between the police and the Central Authority.

4.5.2.2 Delays caused by legalisation and other formalities

56. There was discussion of the problem of delay caused by certain countries' requirements for legalisation of documents. Article 23 expressly prohibits legalisation or similar formality in the context of the Convention. The Convention does not permit a reservation on this matter. The importance of the matter was highlighted by the addition of a new paragraph 1.2.1 in the Guide.

57. Advice was sought on how to deal with this problem. The Deputy Secretary General said the Permanent Bureau could serve as a mediator when there were bureaucratic or communication difficulties of this nature. Another expert noted that his State had recourse to political and diplomatic contacts in order to assist Central Authorities, but of course these measures were for the governments concerned to decide, and that they could not be directed by the Convention. Section 1.2.4 lists a number of solutions to such obstacles to the effective operation of the Convention.

4.5.2.3 Establishing timeframes for dealing with applications

58. There was clarification of the terms “internal” and “external” timeframes in section 4.1, referring to two different situations. External time frames were those imposed from outside the Central Authority and over which the Central Authority had no control, *e.g.* legislation determining time periods in which documents must be filed in court. Internal time frames were set by the Central Authorities themselves or their managers, *e.g.* efficiency standards to set the time limit between the receipt of a request and sending an acknowledgement.

4.5.2.4 Refusal to accept an application

59. A Central Authority’s refusal to accept an application is a sensitive matter and a source of frustration for many requesting authorities. It was clear from the discussion that Central Authorities should exercise caution in assessing whether applications met the requirements of the Convention (see section 4.5) and exercising their rights under Article 27 to reject any applications that manifestly do not meet the requirements.

60. It was said that the lack of uniformity in jurisprudence across jurisdictions was a reason that doubtful applications should be sent, and that Central Authorities should allow courts to reject any applications in which it was unclear if threshold requirements were met. It was the responsibility of the requested Central Authority to provide a clear explanation for the rejection, as well as information on other options available, including how applicants could apply directly to courts in accordance with Article 29 of the Convention.

61. The Guide should not encourage applicants to insist that Central Authorities forward applications that clearly did not meet the threshold requirements.

62. Some experts had suggested that the Guide include advice for rejected applicants. Such advice could be provided to the applicant by the requesting authority if all Central Authorities made this information about their own procedures widely available.

4.5.2.5 Ensuring that legal proceedings are commenced

63. There was discussion of a possible conflict of interest when Central Authorities initiate legal proceedings on behalf of applicants. Whether or not a Central Authority initiated proceedings depended on the country’s laws and procedures, and it was not possible for the Hague Conference to express a preference. Countries allowing the Central Authority to initiate proceedings should confer about ways to avoid the appearance of a conflict of interest. It was agreed that section 4.16 should include a statement that representation of a parent directly by a Central Authority may cause problems if the other parent later becomes an applicant.

4.5.2.6 Minimising requirements for applicants to attend court hearings

64. An expert expressed the opinion that allowing a Convention hearing to go forward in the absence of one parent was contrary to Articles 6 and 8 of the European Convention on Human Rights. In the ensuing discussion, it was noted that Convention hearings do not determine issues of custody and that Articles 6 and 8 did not therefore appear to apply in these situations. It was said that the absence of one parent was not crucial since the burden of

proof was on the abducting parent. Furthermore it was possible for an absent parent to participate via telephone or other means of telecommunication.

4.5.2.7 Appeals

65. The question of whether appeals should be funded by legal aid was discussed. It was noted that the legal aid systems in each country differ considerably, and it was agreed that it was not possible to make directions regarding legal aid, but that it was desirable to draw attention to the necessity of avoiding delays in appeals caused by the need to apply for legal aid.

4.6 Access applications

66. The substance of the access procedures in Chapter 5 were not discussed during the Special Commission, although the question was raised whether the chapter should remain in the Guide in light of the fact that the Final Report on Transfrontier Access / Contact drawn up by William Duncan, Deputy Secretary General, was to be debated.

67. In the final session on Part I of the Guide, it was agreed that some practical guidance for Central Authorities on dealing with access applications was desirable, pending the future production of a section of the Guide to Good Practice dedicated to access / contact matters. Hence, the Special Commission concluded that:

"2(b) Chapter 5 of Preliminary Document No 3 should be retained subject to agreed modifications.

2(c) Work should continue on a separate chapter of the Guide to Good Practice relating to transfrontier access / contact in the context of the 1980 Convention with the following objectives:

- to promote consistent and best practices in relation to those matters which it is agreed fall within the competence and obligations of States Parties under the Convention,*
- to provide examples of practice even in relation to matters which fall within the disputed areas of interpretation."*

4.7 Education and training

68. There was a broad discussion on education and training issues in section 6.2, and many helpful suggestions of current practice which were made during the discussion were later incorporated into the text of the Guide. There was general agreement that Central Authorities are in a unique position to take an active role in the education and training process, and to identify any weaknesses in the securing the delivery of the objects of the Convention.

69. Many experts stated that training and education could be undertaken on a step-by-step basis and gave examples. An expert from Switzerland said that her Central Authority is active in informing other government departments about the Convention, the responsibilities of the government generally and the role of the Central Authority in particular; it also organises seminars with relevant professionals; it encourages university students to use its resources to do research on the Convention, and is active in fostering good relations with the media and the press. An expert from Hungary said that her Central Authority has created a network of specialist abduction lawyers who will assist and advise parents in country areas about the conduct of Hague access cases.

70. Another helpful suggestion that was added to the Guide was for regular regional meetings between countries that share many abduction cases. Such meetings may allow the countries concerned to discuss issues such as patterns of abduction, prevention strategies and immigration matters. In addition, meetings between a Central Authority and its national law

and policy makers may allow opportunities to discuss the effective working of the national implementing legislation and the need for possible amendments.

71. The importance of training for judges and lawyers was recognised. In this regard it was noted that concentration of jurisdiction in a specialist court or courts is beneficial. An expert from France referred to a legislative amendment of 4 March 2002, which had reduced the number of first instance courts having jurisdiction in Convention cases from 180 to 33. Furthermore, appeal is to a specialist chamber within the Court of Appeal. Some examples of training for lawyers included lectures and seminars, information letters to Bar Associations from Central Authorities, and encouraging a network of specialist lawyers.

72. On the other hand, it was recognised that not all Central Authorities are authorised to recommend names of specialist lawyers and that it can be a sensitive issue in some States. However, an observer from the European Network on Parental Child Abduction drew delegates' attention to a comprehensive database maintained by Reunite International Child Abduction Centre, of lawyers from around the world who are specialists in international child abduction cases. Access to this database was offered to interested persons.

4.7.1 Working with police

73. The importance of this topic was evident from the number of times it was raised in different contexts during the debates. It was recognised that in most jurisdictions, the police play a critical role in ensuring that the Convention operates effectively and international obligations are fulfilled. It was also recognised that the Central Authority needs to nurture and maintain a good relationship with the police (and other agencies), especially if there is a lack of enthusiasm for or knowledge about abduction cases.

74. In government agencies, changes of personnel can occur regularly. The re-assignment to other duties of experienced police officers can mean that the Central Authority should be alert to maintaining the relationship with the new officers and keeping them informed of Convention matters. The police may need special training in situations such as taking a child into protective care or if there is a risk of danger to a child or parent when a child is taken into care.

75. A number of examples were given of good co-operation and communication between the Central Authority and the police. Switzerland uses an *aide-mémoire* or memorandum of understanding to reinforce its education and training links with police and child protection agencies. The England and Wales and Scottish Central Authorities have developed guidelines with their local police force to provide assistance in abduction cases. In Belgium, a Ministerial Directive establishes and clarifies the relationship between the police and the Central Authority. (See *also*, Locating the Child, *supra*).

4.8 Issues surrounding safe return of children and parents

76. Some issues surrounding safe returns are beyond the scope of Central Authorities' powers and responsibilities. However it is important that Central Authorities are aware of these issues and their impact on the prompt return of children. The meeting emphasised the importance of recognising that the protection of the child may also sometimes require steps to be taken to protect an accompanying parent. The meeting also recognised that co-operation between both the requested and requesting Central Authorities is needed to achieve the safe return of the child.

77. Criminal proceedings against the abductor was one such issue. Several experts expressed their concerns about the use of criminal proceedings, as the institution of such proceedings could lead to a judicial refusal to return the child in circumstances where the parent would be unable to accompany the child on return. It was said that Central Authorities should do everything in their power to ensure that such proceedings are only used as a measure of last resort.

78. The provision of legal aid and advice to the returning parent was another relevant issue, and some experts recognised its importance. However, it was noted that this issue is not always within the capacity of the Central Authority to influence and the Guide should reflect this.

4.9 Prevention and enforcement: proposal for two new sections

79. Before the close of the discussion on Chapter 6, an observer recommended that two new sections be added to this Chapter, one on the subject of prevention and another on the issue of enforcement. With regard to the issue of enforcement the observer stated that he had found Appendix 2 to Preliminary Document No 3 very helpful as a starting point, as it outlined all the obligations on Central Authorities.

80. This suggestion was agreed to in the final session, and delegates accepted the proposal of Mr Duncan that a draft text for the two new sections should be circulated to all delegates and relevant bodies for comment. The new sections on prevention and enforcement would then be included in the final version.

81. A longer-term project of work on these issues was also agreed to:

"1(b) Preventive measures: The Permanent Bureau should continue to gather information concerning the measures adopted in different Contracting States to prevent abductions from taking place. The experience of non-governmental organisations in this field should be taken into account. The Permanent Bureau should prepare a report on the subject with a view to the possible development of a guide to good practice.

1(c) Enforcement: The Permanent Bureau should continue to gather information on the practice of the enforcement of return orders in different Contracting States. The Permanent Bureau should prepare a report on the subject with a view to the possible development of a guide to good practice."

5. GUIDE TO GOOD PRACTICE: PART II: IMPLEMENTING MEASURES

82. Mr Duncan introduced Part II of the Guide to Good Practice and explained that the Guide had been built upon recognised good practices under the Convention and provided a framework for implementing the Convention. It is directed principally but not exclusively towards new Contracting States. Its purpose is to assist these States to adopt effective measures to implement the Convention and to comply with their Convention obligations.

83. The Guide is intended to cover matters that should be considered by a country interested in joining the Convention as well as suggestions for existing parties as to how to further improve the smooth and efficient implementation of the Convention within their jurisdictions. The Conclusions and Recommendations from the previous Special Commissions and in particular the Fourth Special Commission provide a core for the Guide. Where appropriate, examples from national implementing legislation have been used to support those recommendations as well as to draw attention to arrangements and procedures that have been found to be of practical use in operating the 1980 Convention successfully in different jurisdictions.

84. Ms Ely explained that the practices identified and included in the Guide are not legally binding upon signatory countries, but rather may serve as guidance to countries in implementing the Convention. The drafting of Part II of the Guide, Implementing Measures, utilised a three-stage process: comparative research, consultation with experts and consideration by the Special Commission.

5.1 Definitions

85. The term “implementing measures” used within the Guide refers to the range of legislative, judicial and administrative measures or procedures necessary to establish the essential legal and administrative framework to fully implement the Convention. “Implementing legislation” refers to the range of instruments having the force of law. The term is intended to cover a variety of instruments found in civil law and common law systems, such as acts of parliament, statutes, civil or criminal codes, and all delegated legislation such as rules, regulations and rules of court.

5.2 Key Operating Principles

86. The chapter on Key Operating Principles, which parallels Part I of the Guide on Central Authority Practices, sets out seven principles that were used as a framework throughout the Guide. These principles, viewed as fundamental to the effective operation of the Convention, include the resources and powers allocated to the relevant actors, the speed of the Convention process, communication, co-operation, consistency, progressive implementation and transparency of process.

5.3 The path to signature and ratification or accession

87. It was explained that Chapter 2 is particularly directed towards future Contracting States. The Chapter provides a brief description of the terminology used in Hague Conventions and stresses that regardless of the process by which a State becomes a Party to the Convention, the obligations for that State under the Convention do not differ. The Chapter then outlines steps to take before or shortly after signature and ratification or accession to the Convention, highlighting issues to consider and to consult upon during each stage of the process of becoming Party.

88. Several experts noted the value of the Good Practice Guide for States contemplating acceding to the Convention. There was general consensus as to the importance of having designated a Central Authority by the time of ratification or accession.

89. Discussion ensued as to the need to facilitate the acceptance of accessions and, to this end, the role of the standard Questionnaire for newly acceding States in facilitating provision of information. It was noted that while the Permanent Bureau sends the Questionnaire to all newly acceding States, the Permanent Bureau had not received any completed Questionnaires to-date. Several experts stated that they had received replies to the Questionnaire on a bilateral basis from newly acceding States, and had used the opportunity to exchange relevant information concerning their State.

90. There was general agreement that reference to the Questionnaire, particularly in Chapter 10 of Part II (Facilitating Acceptance of Accessions), would indicate that existing Contracting States, or where appropriate their Central Authorities, sometimes transmit the Questionnaire directly to newly acceding States. Where this occurs it would be helpful if the request were accompanied, as part of an exchange, by information concerning the operation of the Convention in the requesting State.

5.4 Methods of implementation

91. Chapter 3 summarises several methods of implementation used by States and highlights the implications of the different approaches. During the discussion it was emphasised that further domestic measures might be needed following implementation, regardless of the method used by States. These measures may take the form of ensuring that those who are affected by or who have to apply the Convention are aware of their obligations and responsibilities, publicising the entry into force or enacting specific provisions.

92. Several experts noted that implementation should be seen as a continuing process for all Contracting States. A debate ensued concerning the differences in implementation by monist and dualist States. It was recognised that even in monist States, some legislation was often needed either as an aid to interpretation or to establish necessary authorities. The discussion focussed particularly on the transformation method of implementation. Some experts explained the difficulties that they had encountered in their States as a result of the transformation method. They highlighted the potential problems of interpretation where the text of the implementing measures did not accurately mirror the text of the Convention, including the consequent difficulties of using the Pérez-Vera Explanatory Report in evidence. To this end, there was general agreement that newly acceding States should bear in mind the difficulties experienced by Contracting States implementing the Convention through the transformation method, and it was recommended that newly acceding States consider adding the Convention as a schedule to a domestic legislative act. As a result, it was suggested that the drafting committee strengthen the language of section 3.3.2 to highlight the difficulties inherent in the transformation method of implementation and to recognise the international obligations of States within this context.

5.5 Central Authorities

93. The information on Central Authorities complements Part I of the Guide and should be read in conjunction to ensure that Central Authorities are given sufficient powers and resources in the implementing measures to carry out their obligations. The Chapter indicates that a Central Authority should be designated at the time of ratification or accession. Examples from national implementing measures indicate where Central Authorities have been designated, as well as various powers and functions that have been set out in national legislation. It is not intended to be a comprehensive listing, but rather to provide examples that have been useful in different jurisdictions.

94. A brief discussion ensued on section 4.2.2.4 and the power of a Central Authority to accept an application.

5.6 Organisation of the Courts

95. The Chapter addressing organisation of the courts was primarily structured around the Conclusions and Recommendations from the Fourth Special Commission as well as Conclusions from a number of international judicial seminars. There was general agreement as to the considerable advantages to be gained by concentrating jurisdiction to hear Hague return cases in a limited number of courts. The developments occurring in this direction were noted, in particular the recent developments in Germany, France and Hungary. It was recognised that in systems where concentration is not possible, judicial training can be an effective alternative.

5.7 Legal procedural matters

96. Examples from national implementing measures in Chapter 6 highlight provisions to ensure the prompt resolution of return applications, provisions that ensure relevant actors are given sufficient powers in respect of pre-trial procedures and provisional measures, and ways that some States have addressed the issues of expedited procedures, case management, rules of evidence, appeals and enforcement.

97. Interest was expressed in the previous discussion concerning rules of evidence, particularly on the varying views concerning the personal appearance of the applicant (section 6.5.3). Additional comments were invited on constitutional and due process considerations. To this end, the ways in which technology could balance those considerations were noted.

98. Several experts expressed the importance of parental appearance at Convention hearings in view of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Other experts expressed concern that a requirement for the applicant's personal appearance at the proceedings may, in some cases, have the effect of rendering the Convention remedy unavailable.

99. One expert offered examples of how a Central Authority could expedite cases through pre-trial management methods. Those methods included notifying the principal judge of all applications made, so as to ensure individual case management by a judge at all stages of the application process. Other experts noted that appellate courts in many States automatically place Convention appeals on a fast track.

100. Discussion revealed the varying opinions in respect of hearing a child's views in return hearings. While some experts indicated that section 6.5.2 should include a statement affirming that a child of sufficient age and maturity must be heard directly by the judge, other experts expressed reservations about the desirability of such a requirement. In this regard, it was noted that Part II of the Guide was not intended to address Article 13(2) and hearing the views of the child.

101. The work of the European Commission regarding parental responsibility was noted in the context of refining, on a regional level, the progress made by the Hague Conventions of 1980 and 1996. Discussion ensued as to the implications of the proposed European regulation on the functioning of Hague Conventions and the importance of avoiding conflict between regional and global instruments. To this end, the continued co-operation between the Permanent Bureau and the European Commission was highlighted.

5.8 Legal aid and assistance

102. By making a reservation under Article 26(3) of the Convention, a Contracting State may declare that it is not bound to assume any costs resulting from the participation of legal counsel or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice. In States which have not made a reservation to Article 26(3), implementing measures should ensure the availability of appropriate legal advice.

103. The Chapter on legal aid and assistance highlights ways in which States that have made a reservation to Article 26(3) may, in practice, assist applicants. There was a brief discussion on ways in which States could provide increased legal assistance to applicants. One expert noted that the number of *pro bono* attorneys involved in Convention cases could be increased by providing information on the Convention to law firms and by setting up clinical law school programmes. Agreement was expressed that such alternative means of assistance would be useful. Attention was also drawn to the question of legal aid at the appeals stage.

5.9 Access applications

104. The discussion on the inclusion of information on Access Applications ensued in the context of the debate concerning Preliminary Document No 5, Transfrontier Access / Contact and the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*. General consensus emerged that further work on Implementing Measures could address access / contact issues.

5.10 Aids to interpretation

105. There was general agreement that interpretative aids, including the use of supplementary sources, provide clarification as to the objectives of Convention provisions, and are of assistance when drafting implementing legislation and measures.

5.11 Facilitating acceptance of accessions

106. Article 38 of the Convention provides that any State that was not a Member of the Hague Conference on Private International Law on 25 October 1980 may accede to the Convention. However the accession will have effect only between the acceding State and those Contracting States which have formally declared their acceptance of the accession.

107. There are now 73 States Parties to the Convention; nearly one-third of those States have acceded to the Convention in the past five years. A number of Contracting States have developed evaluation procedures in order to determine the ability of a newly acceding State to carry out the duties required by the Convention. To facilitate the provision of information, the standard Questionnaire, drafted and approved at the Fourth Special Commission, is included in the Guide. The Permanent Bureau routinely transmits the Questionnaire to newly acceding States in order to gather information to facilitate their accession. The discussion indicated that the Questionnaire could be a source of information on a bilateral level.

5.12 Implementation: a continuing process

108. Discussion affirmed the importance for all States Parties to continue to monitor and improve the operation of the Convention domestically. All States Parties are encouraged to provide information, education and training to their national actors involved in Convention proceedings. The role of the Permanent Bureau in this regard was highlighted, including its role of monitoring and review of implementation, the holding of Special Commission meetings and providing information resources such as the Hague Conference website, the International Child Abduction Database (INCADAT) and the Judges' Newsletter for International Child Protection.

109. One expert stressed the importance of judicial education and training in States where the legal system did not permit concentration of jurisdiction. Such training programmes allow judges from many States to establish links that not only improve expertise, but also create relations of trust and confidence among these judges that could facilitate return proceedings. The use of technological means of communication was noted as a way in which to increase participation in legal education programmes.

5.13 Amendments

110. In respect of Working Document No 3, it was emphasised that the amendments to Preliminary Document No 4 were primarily to re-emphasise that the provisions of the Guide are not legally binding, but are intended to provide States with guidelines for effectively implementing the Convention.

111. Preliminary Document No 4 and the amendments proposed in Working Document No 3 were approved by the Special Commission.

6. PUBLICATION OF THE GUIDE

112. It was proposed that the final version of the Guide would be published in English, French and Spanish on the Hague Conference website and in hard copy in early 2003. The Special Commission approved the publication of both chapters of the Guide in the following terms:

"1(a) Publication: The Permanent Bureau is authorised, in preparing the Guide to Good Practice for publication, to make changes of an editorial nature, to update, where necessary, any factual information contained in the Guide, to determine the presentation of the material in the Guide, provided that this did not involve any changes in substance or emphasis and to prepare a general introduction to the Guide explaining its background."

7. TRANSFRONTIER ACCESS / CONTACT

7.1 Introduction

113. The Special Commission on General Affairs and Policy of the Hague Conference which met in May 2000 mandated the Permanent Bureau:

"To prepare by the Nineteenth Diplomatic Session of the Hague Conference a report on the desirability and potential usefulness of a protocol to the 1980 Convention that would provide in a more satisfactory and detailed manner than Article 21 of that Convention for the effective exercise of access / contact between children and their custodial and non-custodial parents in the context of international child abductions and parent relocations, and as an alternative to return requests."

114. Mr Duncan explained that in response to this mandate work had progressed on a continuous and consultative basis and he expressed appreciation for all comments that had been received. As part of the consultation process a Questionnaire had been circulated which laid the ground for a preliminary report which was presented to the Fourth Meeting of the Special Commission to review the operation of the 1980 Convention in March 2001. During a brief discussion at this Commission several delegates had emphasised the very serious nature of the problem and the need for an urgent response.

115. A Consultation Paper was subsequently sent out in January 2002, to obtain the views of Contracting States on possible approaches to the problem. The Permanent Bureau also attended many meetings and judicial and other seminars where this topic was discussed. This consultation process culminated in the Final Report on Transfrontier Access / Contact drawn up by William Duncan, Deputy Secretary General, which he presented to the Special Commission. The Special Commission welcomed the Report and Mr Duncan introduced the Report.

7.2 General nature of the problem and the role of the law

116. The resolution of the problem surrounding cross-frontier access is as difficult as it is urgent and important. What is at issue is the forging and maintenance of close human relationships and there are limits to what the law can achieve in matters of this kind. We would all prefer if possible that the law should not need to be invoked in an area where the exercise by parents of their responsibilities, in the interests of their children is the ideal. Indeed, section 16 of the Report which seeks to define the role of the law in this area, emphasises the provision of a framework which will encourage and support parental co-operation and agreement. The legal framework needs to be both fair and firm if it is to support co-operation and help to remove the insecurities and fears that often underlie parental disputes. Additionally, judges need the security of knowing that when they make contact orders, particularly in the context of permitting relocation by the custodial parent, the terms and conditions which they stipulate will be respected in the legal system where contact is to take place.

7.3 The role played by the 1980 Convention

117. Securing protection for rights of access in cross-frontier situations and effective respect for such rights is one of the objectives of the 1980 Convention. Certain elements of the Convention have played a very important part in achieving this objective, particularly the provisions of the Convention which provide for prompt return of the child in cases where wrongful retention occurs after a period of access. On the other hand, Article 21 of the Convention which deals specifically with the organisation and securing of rights of access has, because of its uncertain language, not provided a firm basis in most Contracting States, either for defining the role and responsibility of Central Authorities or for defining the competence or powers of courts and tribunals in this area.

7.4 Rights of access: law and practice under the 1980 Convention

118. Chapter II of the Report analyses some of the case law and practice under Article 21 and shows why there are divergences in the interpretation and practices adopted under it. These differences relate to whether Article 21 provides any basis for court proceedings. A number of questions relating to this are raised in the chapter, *e.g.* if Article 21 does provide a basis for court proceedings, under what circumstances? Should it apply only in emergency cases? Should it apply only where an access order exists already? What are the appropriate procedures? Should there be a fast-track procedure? Should legal aid equivalent to that provided in abduction cases be available? There is even disagreement on whether Article 21 may be a basis for seeking interim access pending a decision on return.

119. The Report also highlights that relatively few access applications proceed under Article 21 and draws attention to "A Statistical Analysis of Applications made in 1999 under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*" drawn up by Professor Nigel Lowe, where the ratio of abduction to access cases was 5:1. However, it was suggested that a number of return applications are possibly access applications in disguise. Additionally, the Study also showed that access applications take longer to process than return applications.

7.5 Elements of the framework for resolving international access / contact disputes

120. Chapter III of the Report steps back from the 1980 Convention and attempts to identify the wide range of elements that have a bearing on the solution to cross-frontier access / contact disputes. Mr Duncan highlighted that it is important to paint a complete picture, stressing that many of the elements are inter-related and that if law reform is to be successful these relationships need to be understood.

7.5.1 Jurisdiction, recognition and enforcement

121. The Report first addresses the area of jurisdiction, recognition and enforcement and emphasises the contribution that will be made when the 1996 Convention begins to operate more widely. That Convention provides a rational framework for the exercise of jurisdiction in this area. In particular it avoids competing jurisdictions. It provides for the recognition by operation of law and enforcement of access orders. It contains many provisions for international co-operation at both the administrative and judicial levels. Of particular importance in this regard are the provisions for the transfer of cases and the special provisions concerning access in Article 35.

7.5.2 National laws and procedures (including enforcement procedures)

122. The general principle of the right of the child to maintain contact with both parents is of course broadly accepted. But there is a difference in the weight attached in different jurisdictions to the presumption in favour of contact by the non-custodial parent, particularly in cases where domestic violence has been alleged. The issue of enforcement is a difficult one and one which is subject to review with a view to reform in many countries. However, the evidence is that existing systems are not sufficiently sensitive to the special circumstances of international cases.

7.5.3 Important developments at regional and national levels

123. The important developments at the regional and national level were referred to by Mr Duncan, in particular the development by the Council of Europe of a Convention on Contact Concerning Children, designed among other things to create a more uniform approach within domestic law to issues of contact, and to encourage the use of safeguards and guarantees. He also referred to developments within the European Union, designed to ensure greater respect for access orders made among Member States. Reference was also made to the Franco-

German Mediation Commission established in 1998 and to the recent bilateral negotiations that have been taking place between the United States of America and Germany.

7.6 Looking to the future

7.6.1 A binding instrument - a Protocol to the 1980 Convention

124. Turning to future action and the possible strategies to be adopted in resolving problems of international access, and particularly those which arise within the context of the 1980 Convention, the idea of a Protocol to the 1980 Convention was addressed. Mr Duncan pointed out that the responses to the Consultation Paper had shown a fairly widespread desire for more binding and effective rules in this area. At the same time the complications associated with the process of negotiating a Protocol were recognised. Mr Duncan suggested that the particular option of working on a new Protocol should not be embarked upon until work had been done on other fronts first. All contributors agreed that the use of a Protocol should be seen as a last resort, recognising the dangers of having too many competing instruments. The Special Commission concluded that:

"2(a) Transfrontier Access / Contact: It is premature to begin work on a Protocol to the 1980 Convention. If the alternative steps outlined below do not lead to significant improvements in practice, the issue of a Protocol should be revisited in the future."

7.6.2 The 1996 Hague Convention on the Protection of Children

125. The 1996 Convention, while not being a panacea for all the problems in this area, is an important part of the solution and it is clear that many States favour ratification.⁴ Mr Duncan suggested that the Special Commission should recommit itself to the implementation of the 1996 Convention by the Contracting States to the 1980 Convention. Many experts expressed their support for ratification / accession to the 1996 Convention. Indeed, some experts stated that the process of implementation had already begun in their States.⁵ Many experts expressed a desire that the European Union would be able to allow Member States to ratify this Convention soon. The Special Commission formulated the following conclusion on this issue:

"2(e) Transfrontier Access / Contact: It is recognised that the provisions of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children has the potential to make a substantial contribution to the solution of certain problems surrounding cross-frontier access / contact. Those States which have already agreed in principle to ratify or accede to the 1996 Convention are urged to proceed to ratification or accession with all due speed. Other States are strongly encouraged to consider the advantages of ratification or accession and implementation."

7.6.3 Non-binding Recommendations and/or a Guide to Good Practice

126. Mr Duncan turned to the possibility of formulating non-binding recommendations and / or a Guide to Good Practice. He noted the difficulties of this approach in relation to matters on which there are wide divergences in the interpretation of Article 21 of the 1980 Convention. It

⁴ As of 15 March 2003, the Protection of Children Convention of 1996 has 6 States Parties; the Czech Republic, Monaco, Morocco and Slovakia have ratified the Convention; Estonia and Ecuador have acceded to the Convention. An additional 3 countries (Latvia, the Netherlands and Poland) have signed, but not yet ratified the Convention. The 1996 Convention entered into force on 1 January 2002.

⁵ Legislation to implement the 1996 Convention has been introduced in Australia and implementing legislation has been passed by the Irish Parliament (Oireachtas). In Canada steps are also being taken to prepare the necessary implementing legislation. A uniform implementing act for the 1996 Convention, as well as one for *The Hague Convention of 13 January 2000 on the International Protection of Adults*, was drafted and adopted by the Uniform Law Conference of Canada (ULCC) in November 2001.

would be possible to collect together examples of the ways Article 21 is applied in practice. Many experts welcomed the Guide to Good Practice as a useful starting point and highlighted the importance of principles of good practice in this area. The Special Commission agreed that Chapter 5 of Preliminary Document No 3 on access / contact issues in relation to Central Authorities should be retained. Mr Duncan asked whether there might be a possibility that progress could be made on the difficult question of enforcement through the formulation of non-binding principles which draw attention to the special features of international cases. These principles could assist countries in formulating or applying domestic provisions, and would cover issues relating to time, distance and cost. On this point the Special Commission recommended that:

"2(d) Transfrontier Access / Contact: Work should begin on the formulation of general principles and considerations relevant to international access / contact cases. The idea is not to create a set of principles applying to access cases generally, but rather to draw attention to certain general considerations and special features, which need to be borne in mind by Contracting States and their authorities when formulating policies in respect of international access / contact cases. These general principles would not be binding; they would be advisory in nature. As well as offering general advice to States in formulating policy in this area, the general principles could be helpful to Central Authorities in informing their practice, they could possibly be helpful to the courts and other authorities, as well as to applicants as they present their cases."

7.6.4 Judicial Co-operation

127. Mr Duncan referred to the importance of judicial co-operation including meetings of judges from different countries and judicial training. An expert also noted that the difficulties with the interpretation of Article 21 are principally a common law problem which common law judges could assist in addressing without infringing upon the competence of the legislature or the executive. In relation to these issues, the Special Commission made the following conclusions:

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

2(f) Transfrontier Access / Contact: The meeting notes and welcomes the readiness of judges from common law jurisdictions to tackle problems posed by conflicting interpretations of Article 21 in their jurisprudence by proposing a common law judicial congress."

7.6.5 Mediation

128. Finally, Mr Duncan referred to the importance of the work being done to develop mediation services in the context of disputes concerning international contact / access. Some experts also recognised the importance of mediation as one useful element with regard to international contact / access issues.

8. CHILD ABDUCTION AND TRANSFRONTIER ACCESS: BILATERAL CONVENTIONS AND ISLAMIC STATES

129. The Permanent Bureau has conducted some preliminary research on the issue of child abduction related to Islamic States culminating in Preliminary Document No 7, Child Abduction and Transfrontier Access: Bilateral Conventions and Islamic States - A Research Paper drawn up by Ms Caroline Gosselain. The Commission expressed gratitude to the Hague Conference for having put this topic on the agenda of the Special Commission.

130. Experts from States with experience regarding bilateral agreements were invited to share these experiences with the Commission. Experts from some States informed the Commission of bilateral agreements existing between their States and Islamic States. In this regard an expert from Sweden stated that Sweden and Tunisia had established an Advisory Commission concerned with the operation of their bilateral agreement of 1994, and that such a Commission was important in resolving individual cases. It was also noted that a bilateral agreement had been negotiated between Sweden and Egypt in 1996. An expert from Belgium referred to the co-operative relationship developed over many years between Belgium and Morocco and Tunisia, including the Belgian-Tunisian Commission instituted by administrative agreement.

131. It was noted that several States had approached the French Central Authority seeking advice on the possibility of entering into agreements with Islamic States. Experts from some other States highlighted that there had been little success in developing bilateral agreements. An expert from France noted that France preferred to have some kind of agreement even if it was imperfect, as opposed to no agreement.

132. An expert from Switzerland recognised that Switzerland preferred multilateral agreements but given current social trends, Switzerland had turned to bilateral agreements in order to address problems of abduction and access. It was noted that Switzerland and Lebanon are currently negotiating a bilateral agreement. It was suggested that bilateral agreements with Islamic States could be an important channel of communication, but that successful implementation depended on a number of factors which could best be addressed on a multilateral level. Several experts drew attention to the importance of continuing regular exchanges with Islamic States in order to maintain communication and understanding of their respective judicial systems. There was a general consensus that further research into the law of Islamic States would be beneficial.

133. Mr Duncan expressed the Permanent Bureau's willingness to continue to monitor developments and to disseminate information. He emphasised the need for more information on the functioning of bilateral agreements, especially from Islamic States.

134. In this respect an observer noted that existing bilateral agreements were used less and less frequently and that successful returns in many cases were the result not of the application of Conventions, but of reforms in family law within the Islamic States themselves. It was noted that 40% of the work done by her organisation involved non-Convention States, and that research would be published in 2004 or 2005 on this subject. With regard to research in relation to abductions to Pakistan from other *Sharia* law States, it was indicated that informal methods of assistance were frequently used. Pakistani courts give power to custody decisions issued by *Sharia* courts. It was suggested that States avail themselves of Islamic courts within their own territories, as these may be capable of assisting in the resolution of problems relating to abduction and access, whether through rulings or mediation. Most States have an Islamic Judicial Council and the International Bar Association had made a concerted effort to recruit association and individual membership from Islamic States.

135. Regarding the Hague Conference, the Secretary General Mr van Loon stated that a number of Islamic States had expressed interest in joining the Conference. Currently, Egypt, Morocco and Jordan are Member States and Malaysia has been admitted to become a Member. Mr van Loon stressed the importance of being certain that new Member States were ready to

apply the rules of the Conference, and emphasised that the door was open to Islamic States. As to the Hague Conference's effort to attract Islamic States he made reference, among other things, to a Congress organised in co-operation with the University of Osnabrück on Islamic Law and its Reception by the Courts in the West, held in October 1998.

136. The Permanent Bureau agreed to act as a clearinghouse for information on the subject of Islamic States and requested delegations which had referred to documents not appearing in Preliminary Document No 7 or its annexes to forward these documents to the Permanent Bureau. It was noted that the judicial systems of Islamic States were not necessarily consistent with one another, and emphasised the importance of multilateral meetings in order to gather more information. Mr Duncan stressed that the Permanent Bureau would like to go further with their research. He noted that the second step would be to organise a regional meeting with experts, judges and practitioners from the concerned States. He emphasised that this process seeks to establish a mutual relation of trust between States having different legal cultures.

137. The Special Commission concluded that:

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

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

9.1 Introduction

138. Mr Lortie introduced the discussion. During the Fourth Special Commission Meeting to review the practical operation of the 1980 Child Abduction Convention, held from 22-28 March 2001, the issue of the feasibility and limitations of direct international judicial communications and the development of a network of liaison judges was addressed in the context of issues surrounding the safe and prompt return of the child (and the custodial parent where relevant).

139. The value of such communications in ensuring a speedy and safe resolution of abduction cases has been well recognised by judges throughout the world at international judicial seminars such as De Ruwenberg 2000 and Washington 2000.⁶ Direct judicial communications have been used to secure the safe return of the child and the abducting parent,⁷ and have been helpful in discussing problems of delay and conflicting jurisdiction.⁸ Direct international judicial communications is a contemporary phenomenon.⁹

140. The following Conclusions and Recommendations adopted by the March 2001 Special Commission focus on international judicial communications between judges or between judges and other authorities:

"Direct judicial communications

5.5 Contracting States are encouraged to consider identifying a judge or judges or other persons or authorities able to facilitate at the international level communications between judges or between a judge and another authority.

5.6 Contracting States should actively encourage international judicial co-operation. This takes the form of attendance of judges at judicial conferences by exchanging ideas / communications with foreign judges or by explaining the possibilities of direct communication on specific cases.

In Contracting States in which direct judicial communications are practised, the following are commonly accepted safeguards:

- communications to be limited to logistical issues and the exchange of information;*
- parties to be notified in advance of the nature of proposed communication;*
- record to be kept of communications;*
- confirmation of any agreement reached in writing;*
- parties or their representatives to be present in certain cases, e.g. via conference call facilities.*

The Permanent Bureau should continue to explore the practical mechanisms for facilitating direct international judicial communications."

9.2 Developments following the March 2001 Special Commission

141. In relation to the first Conclusion and Recommendation (5.5), the delegations attending the September / October 2002 Special Commission noted that the international

⁶ The Conclusions and Recommendations of these seminars are available at: <<http://hcch.net/e/conventions/seminar.html>>.

⁷ See the English High Court decision in *Re M and J (Abduction)* (International Judicial Collaboration) [1999] 3 FCR 721; Singer J. available at: <<http://incadat.com>> Reference HC/E/UKe 266.

⁸ See "Memoirs of a Liaison Judge", The Honourable Justice Joseph Kay, The Judges' Newsletter, Volume III, at 20-26.

⁹ Volume IV of The Judges' Newsletter focuses particularly on direct international judicial communications. All volumes of the Newsletter are available at: <<http://hcch.net/e/conventions/news28e.html>>.

network of liaison judges, first proposed at the 1998 De Ruwenberg Seminar for judges on the international protection of children, has been steadily growing. The network currently includes: The Right Honourable Lord Justice Mathew Thorpe (Judge of the Court of Appeal, England and Wales), The Honourable Justice Joseph Kay (Judge of the Appeal Division of the Family Court of Australia), His Honour Judge Patrick Mahony (Principal Judge of the Family Court of New Zealand), The Honourable James Garbolino (Presiding Judge of the Superior Court of California, United States – informal designation), The Honourable Jacques Chamberland (Judge of the Court of Appeal of Québec, Canada – informal designation), The Honourable Justice Robyn Diamond (Judge of the Court of Queen's Bench of Manitoba, Canada – informal designation), His Excellency Justice Antonio Boggiano (Judge and former President of the Supreme Court of Argentina), Dr George A. Serghides (President of the Family Court of Limassol-Paphos, Cyprus), The Honourable Michael Kistrup (Judge of the City Court of Copenhagen, Denmark), The Honourable Lord Iain Bonomy (Judge of the Court of Session, Scotland), The Honourable Mr Justice Gillen (Judge of the High Court, Northern Ireland), The Honourable Justice Michael Hartmann (Judge of the High Court of the Special Administrative Region of Hong Kong – informal designation), and The Honourable Jónas Johannsson (Judge of the Héraósdómur Reykjaness Court, Iceland).¹⁰

142. As to the second Conclusion and Recommendation (5.6), an increase of judicial seminars was noted¹¹ and the organisation of and the attendance at those judicial seminars was strongly supported by delegations. Finally, in respect of the third Conclusion and Recommendation (5.7), a Questionnaire concerning practical mechanisms for facilitating direct international judicial communications in the context of the 1980 Convention (*see supra*) was circulated to Member States, Contracting States, and interested international governmental and non-governmental organisations in January 2002. The Questionnaire addresses the feasibility and / or desirability of the appointment of a liaison judge or authority, administrative aspects of direct international judicial communications, practical and legal aspects of such communications, and a number of general matters.¹²

9.3 Presentation of the Preliminary Report

143. Sixteen jurisdictions responded to the Questionnaire, namely, Austria, Bosnia and Herzegovina, Chile, China (Hong Kong Special Administrative Region), Denmark, Finland, France, Germany, Iceland, the Netherlands, Poland, Switzerland, the United Kingdom (England and Wales, Northern Ireland and Scotland) and Uzbekistan, and one non-governmental international organisation, the International Centre for Missing and Exploited Children (ICMEC). On the basis of these responses to the Questionnaire, as well as information obtained from other sources, including judicial seminars in which the Permanent Bureau has been involved over recent years and articles from Volume III and IV of the Judges' Newsletter, Mr Lortie, First Secretary, has drawn up a Preliminary Report on the subject of direct international judicial communications in the context of the 1980 Convention.¹³

144. In essence, the Preliminary Report offers an inventory of the different mechanisms in place to facilitate direct international judicial communications. It also identifies the difficulties and constraints States and judges may have with regard to these mechanisms. Delegations recognised that the Preliminary Report will provide a valuable basis from which to continue to explore the practical mechanisms for facilitating direct international judicial communications.

¹⁰ This list is updated as of 15 March 2003.

¹¹ See the list of seminars at <<http://hcch.net/e/conventions/seminar.html>>. A list of seminars is also available at paragraph 46 of the Preliminary Report.

¹² The Questionnaire may be accessed on the Conference website at: <<http://www.hcch.net/e/conventions/menu28e.html>> and remains relevant for the continuation of the work on this issue.

¹³ The Preliminary Report may be accessed on the Hague Conference website at: <<http://hcch.net/e/conventions/reports28e.html>>.

9.4 The feasibility and/or desirability of the appointment of a liaison judge or authority; and the administrative aspects

145. Delegations present at the Special Commission noted that several liaison judges have already been appointed (*see supra*) and experience shows that neither objections nor insurmountable legal barriers stood in the way of nominating liaison judges. In relation to this latter issue, an expert queried who should be making the appointments: the judicial council or the Chief Judge of the jurisdiction. The discussion that followed clearly showed that nominations could be done in different ways, formally or informally, by the governments, *e.g.* a Central Authority, or the judiciary, *e.g.* the judicial council, the national association of judges or the Chief Judge of the jurisdiction, or by a combination of the two. It was noted that different formulas exist in this respect depending on the types of judicial systems and Central Authorities involved and their respective roles.

146. Many delegates discussed the number of liaison judges that might be appointed. Relevant factors included the number of jurisdictions within the State and the number of courts empowered to hear Convention applications. Some judges highlighted that the role of a liaison judge is not onerous. In the course of the discussion, some delegates indicated that judicial communications do occur both within their States and at an international level even where a liaison judge has not been appointed. Numerous delegates highlighted the two different aspects of judicial communications:

- 1) communications relating to the exchange of general information of law and procedure, and
- 2) communications on a case specific basis to resolve particular problems (*see infra*).

147. Concerning the first point, some delegates recognised that there are already some procedures in place to deal with the exchange of information, through the Central Authorities, or through other processes.

148. Some delegates stated that there could be some practical problems in establishing a network of liaison judges, particularly in respect of language limitations and difficulties in States where jurisdiction in Convention cases has not been concentrated in a small number of courts. In the case of language difficulties, one liaison judge reminded delegates that communications in writing can, to a great extent, alleviate such problems. It was also noted that the role of liaison judge must complement and not detract from the important work of the Central Authorities. Many jurisdictions have also indicated in their responses to the Questionnaire that it is important to have a clear division of roles and responsibilities between the Central Authorities and the judges. It was suggested that a guide to good practice could be drawn up. However, other delegates noted that such a document must remain flexible.

149. Some delegates underlined that certain networks of judges either already exist or are in the process of being introduced. In this respect, an observer from the International Association of Women Judges (IAWJ) mentioned the existence of a network of 4000 judges from 79 different States and invited delegates to use this network to help to facilitate judicial communication. Furthermore, an observer from the European Commission reminded the delegates of the launching of the European Judicial Network on 1 December 2002.

150. Many delegates recognised the importance and influence of international judicial conferences and associations. It was noted that these conferences and associations were extremely valuable to facilitate the exchange of information. The wide support for paragraph 69 of Preliminary Document No 6 was recognised:

"All jurisdictions that have responded to the Questionnaire support the holding of more judicial and other seminars, both national and international."

151. It was understood that funding would be required in order for further seminars to take place. In this regard, gratitude was expressed towards the European Union who had in the past provided funding for several judicial conferences.

9.5 The practical and legal aspects

152. With regard to the practicalities and legal aspects surrounding direct international judicial communications, the Preliminary Report discusses some examples of communications within States and between States, and also considers some of the relevant case law in this area,¹⁴ as well as legal and procedural safeguards. Several delegates generally recognised that communications on specific cases must be transparent and due process requirements and other domestic procedural requirements must be respected. A delegate referred to the safeguards listed in paragraph 56 of the Preliminary Report and recognised that the list gave an excellent framework for communications.

9.6 Discussion of future work

153. With regard to future work, delegates discussed with interest the proposal to draw up non-binding guidelines in the area of direct judicial communications. Mr Lortie indicated that a broad perspective would need to be taken for such guidelines and that they would need to be flexible and inclusive. He suggested the establishment of an advisory group, primarily consisting of judges. The usefulness of such guidelines and the need to distinguish the general exchange of legal information from direct judicial communication in specific cases was recognised. Finally, it was agreed that the reference to the 1996 Convention within paragraph 102(e) was premature. It was noted that a great diversity exists in relation to judicial systems, types of Central Authorities and their respective roles, and, therefore, the need for flexibility must be taken into account in the drawing up of non-binding guidelines in this area.

154. The Special Commission adopted the following recommendation:

"The Permanent Bureau will:

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

(b) Continue informal consultations with interested judges based on this Preliminary Report together with the Report that will be drawn up by the Permanent Bureau on the Conclusions and Recommendations of the Special Commission of September / October 2002.

(c) Continue to examine the practical mechanisms and structures of a network of contact points to facilitate at the international level communications between judges or between a judge and another authority.

(d) Complete the Final Report that will include further analysis of policy issues and tentative conclusions.

(e) Draw up an inventory of existing practices relating to direct judicial communications in specific cases under the 1980 Hague Convention with the advice of a consultative group of experts drawn primarily from the judiciary.¹⁵

¹⁴ Some of these interesting cases are available on INCADAT at: <<http://www.incadat.com>>.

¹⁵ See Conclusion 5, 2002 Special Commission. It is the intention of the Permanent Bureau to finalise a Report on direct international judicial communications within the next 18 months in accordance with the Conclusions and Recommendations. Therefore, Member States of the Hague Conference on Private International Law and States Parties to the 1980 Convention which have not yet responded to the Questionnaire are invited to do so within twelve months. Interested international governmental and non-governmental organisations are invited to do the same. Furthermore, judges that may wish to discuss direct international judicial communications at their judicial seminars should consider inviting the Permanent Bureau to their discussions.

10. INCASTAT: DEVELOPMENT OF A STATISTICAL DATABASE

155. The Permanent Bureau obtained a mandate from the Fourth Meeting of the Special Commission to develop a statistical database of child abduction cases which would be accessible through the website of the Hague Conference. Conclusion 1.15 states:

"The Special Commission endorses the Permanent Bureau's plan to establish a statistical database as a complement to the International Child Abduction Database, and encourages Contracting States to consider methods by which the resources for the project may be made available."

156. Since the Fourth Special Commission in March 2001, the Canadian government has generously donated software and equipment to assist in developing the statistical database, with the involvement of Worldreach Software Corporation. Worldreach is a Canadian company which has developed a computer software package called iChild. A representative from the Canadian Government and two representatives from Worldreach demonstrated the iChild software at the Special Commission.

157. Since the Special Commission Meeting of September / October 2002, the Permanent Bureau has been involved in testing the case management software potential of iChild. The next stage of the project is to have the software tested by Central Authorities. A group of Central Authorities has been invited to participate in site trials which will begin in March 2003 and run for three months.

158. The September / October 2002 Special Commission adopted the following Conclusion:

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

ANNEX 1 - CONCLUSIONS AND RECOMMENDATIONS

HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

Conclusions and Recommendations

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

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

1. **GOOD PRACTICE GUIDE**

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

2. **TRANSFRONTIER ACCESS / CONTACT**

- (a) It is premature to begin work on a Protocol to the 1980 Convention. If the alternative steps outlined below do not lead to significant improvements in practice, the issue of a Protocol should be revisited in the future.
- (b) Chapter 5 of Preliminary Document No 3 should be retained subject to agreed modifications.
- (c) Work should continue on a separate chapter of the Guide to Good Practice relating to transfrontier access/contact in the context of the 1980 Convention with the following objectives:

- a. to promote consistent and best practices in relation to those matters which it is agreed fall within the competence and obligations of States Parties under the Convention,
 - b. to provide examples of practice even in relation to matters which fall within the disputed areas of interpretation.
- (d) Work should begin on the formulation of general principles and considerations. The idea is not to create a set of principles applying to access cases generally, but rather to draw attention to certain general considerations and special features, which need to be borne in mind by Contracting States and their authorities when formulating policies in respect of international access / contact cases. These general principles would not be binding; they would be advisory in nature. As well as offering general advice to States in formulating policy in this area, the general principles could be helpful to Central Authorities in informing their practice, they could possibly be helpful to the courts and other authorities, as well as to applicants as they present their cases.
- (e) It is recognised that the provisions of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children* has the potential to make a substantial contribution to the solution of certain problems surrounding cross-frontier access/contact. Those States which have already agreed in principle to ratify or accede to the 1996 Convention are urged to proceed to ratification or accession with all due speed. Other States are strongly encouraged to consider the advantages of ratification or accession and implementation.
- (f) The Meeting notes and welcomes the readiness of some judges from common law jurisdictions to tackle problems posed by conflicting interpretations of Article 21 in their jurisprudence by proposing a common law judicial congress.

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

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

4. JUDICIAL SEMINARS AND THE JUDGES' NEWSLETTER

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

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

The Permanent Bureau will:

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

6. INCASTAT

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