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**Conclusions et Recommandations de la Quatrième réunion de la
Commission spéciale sur le fonctionnement de la Convention de La Haye du
25 octobre 1980 sur les aspects civils de l'enlèvement international d'enfants
(22-28 mars 2001)**

établies par le Bureau Permanent

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**Conclusions and Recommendations of 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
(22-28 March 2001)**

drawn up by the Permanent Bureau

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TABLE OF CONTENTS

	Page
PART I - THE ROLE AND FUNCTIONS OF CENTRAL AUTHORITIES	4
- <i>Structural issues</i>	<i>4</i>
- <i>Communication and co-operation in respect of individual cases</i>	<i>4</i>
- <i>Exchange of information</i>	<i>4</i>
- <i>Locating the child.....</i>	<i>5</i>
- <i>Securing the voluntary return of the child.....</i>	<i>5</i>
- <i>Securing the safe return of the child</i>	<i>6</i>
- <i>The maintenance of statistics</i>	<i>6</i>
- <i>Promoting good practices</i>	<i>6</i>
 PART II - SECURING STATE COMPLIANCE WITH CONVENTION OBLIGATIONS	 7
- <i>Implementation</i>	<i>7</i>
- <i>Standard questionnaire for newly-acceding States</i>	<i>7</i>
- <i>Monitoring and review.....</i>	<i>8</i>
 PART III - JUDICIAL PROCEEDINGS, INCLUDING APPEALS AND ENFORCEMENT ISSUES, AND QUESTIONS OF INTERPRETATION	 9
- <i>Courts organisation</i>	<i>9</i>
- <i>Speed of Hague procedures, including appeals</i>	<i>9</i>
- <i>The provision of legal aid and advice</i>	<i>10</i>
- <i>Manner of taking evidence.....</i>	<i>10</i>
- <i>Procedures for hearing the child, and determining whether the child objects to return</i>	<i>10</i>
- <i>Methods and speed of enforcement</i>	<i>10</i>
 PART IV - INTERPRETATION OF KEY CONCEPTS.....	 10
- <i>Approach to interpretation.....</i>	<i>10</i>
- <i>Article 13, paragraph 1 b)</i>	<i>11</i>
- <i>Consent and acquiescence (Article 13, paragraph 1 a))</i>	<i>11</i>
- <i>Article 20</i>	<i>11</i>
 PART V - ISSUES SURROUNDING THE SAFE AND PROMPT RETURN OF THE CHILD (AND THE CUSTODIAL PARENT, WHERE RELEVANT)	 11
- <i>Safe return orders.....</i>	<i>11</i>
- <i>Criminal proceedings</i>	<i>11</i>
- <i>Immigration matters</i>	<i>11</i>
- <i>The provision of legal aid and advice</i>	<i>11</i>
- <i>Direct judicial communications.....</i>	<i>12</i>
 PART VI - CROSS FRONTIER ACCESS/CONTACT	 12

TABLE OF CONTENTS (CONTINUED)

	Page
PART VII – MATTERS OF A GENERAL NATURE	13
- <i>The 1996 Hague Convention on Child Protection</i>	<i>13</i>
- <i>Encouraging further ratifications and accessions</i>	<i>13</i>
- <i>Decisions on relocation</i>	<i>13</i>
 PART VIII – INCADAT, RESEARCH AND THE JUDGES’ NEWSLETTER	 13
- <i>The International Child Abduction Database (INCADAT).....</i>	<i>13</i>
- <i>Research</i>	<i>13</i>
- <i>The Judges’ Newsletter on International Child Protection</i>	<i>13</i>
 GENERAL CONCLUSION	 14

**Conclusions and Recommendations of the Fourth Meeting of the
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(22–28 March 2001)**

PART I - THE ROLE AND FUNCTIONS OF CENTRAL AUTHORITIES

Structural issues

- 1.1 The Central Authorities designated by the Contracting States play a key role in making the Convention function. They should be given a mandate which is sufficiently broad, and the qualified personnel and the resources, including modern means of communication, necessary to act dynamically and carry out their functions effectively. Central Authorities should have a regular staff, able to develop expertise in the operation of the Convention.
- 1.2 Contracting States should inform the Permanent Bureau promptly of the contact details of their Central Authority(ies), and Central Authorities should inform the Permanent Bureau promptly of the names of contact persons, of the means by which they may be contacted and of their languages of communication. Central Authorities should promptly inform the Permanent Bureau of any changes in these details.

Communication and co-operation in respect of individual cases

- 1.3 Central Authorities should acknowledge receipt of an application immediately and endeavour to provide follow-up information rapidly. Central Authorities should reply promptly to communications from other Central Authorities.
- 1.4 Central Authorities should, as far as possible, use modern rapid means of communication in order to expedite proceedings, bearing in mind the requirements of confidentiality.
- 1.5 In relation to the translation of documents, Central Authorities are reminded of the provisions of Article 24 of the Convention.
- 1.6 The requesting Central Authority should ensure that each application is accompanied by a sufficient statement of the legal and factual basis on which the application rests, in particular concerning the matters of the habitual residence of the child, rights of custody and the exercise of those rights, as well as detailed information on location of the child. Central Authorities are reminded of the model form for the Request for Return recommended by the Fourteenth Session of the Hague Conference (*Actes et Documents, (Proceedings) XIV ème Session*, p. 423, and on the Hague Conference website at: <http://www.hcch.net/e/conventions/expl28e.html>).

Exchange of information

- 1.7 Each Central Authority is encouraged, where this is feasible, to establish and regularly update a website, details of which should be furnished to the Permanent Bureau for the purpose of establishing a link with the Hague Conference website.

1.8 It is recommended that each Central Authority should publish, on its website if possible and/or by other means, such as a brochure or flyer (the precise format being a matter for the Central Authority), information concerning at least the following matters:

- the other Contracting States in relation to whom the Convention is in effect;
- the means by which a missing child may be located;
- the designation and contact details for the Central Authority;
- application procedures (for return and access), documentary requirements, any standard forms employed and any language requirements;
- details, where applicable, of how to apply for legal aid or otherwise for the provision of legal service;
- the judicial procedures, including appeals procedures, which apply to return applications;
- enforcement options and procedures for return and access orders;
- any special requirements which may arise in the course of the proceedings (*e.g.* with regard to matters of evidence);
- information concerning the services applicable for the protection of a returning child (and accompanying parent, where relevant), and concerning applications for legal aid for, or the provision of legal services to, the accompanying parent on return;
- information, if applicable, concerning liaison judges.

Locating the child

1.9 Central Authorities, in seeking to locate children, should be able to obtain information from other governmental agencies and authorities and to communicate such information to interested authorities. Where possible, their enquiries should be exempted from legislation or regulations concerning the confidentiality of such information. Interpol can play a constructive and helpful role in locating abducted children.

Securing the voluntary return of the child

1.10 Contracting States should encourage voluntary return where possible. It is proposed that Central Authorities should as a matter of practice seek to achieve voluntary return, as intended by Article 7 c) of the Convention, where possible and appropriate by instructing to this end legal agents involved, whether state attorneys or private practitioners, or by referral of parties to a specialist organisation providing an appropriate mediation service. The role played by the courts in this regard is also recognised.

1.11 Measures employed to assist in securing the voluntary return of the child or to bring about an amicable resolution of the issues should not result in any undue delay in return proceedings.

1.12 Contracting States should ensure the availability of effective methods to prevent either party from removing the child prior to the decision on return.

Securing the safe return of the child

- 1.13 To the extent permitted by the powers of their Central Authority and by the legal and social welfare systems of their country, Contracting States accept that Central Authorities have an obligation under Article 7 *h*) to ensure appropriate child protection bodies are alerted so they may act to protect the welfare of children upon return in certain cases where their safety is at issue until the jurisdiction of the appropriate court has been effectively invoked.

It is recognised that, in most cases, a consideration of the child's best interests requires that both parents have the opportunity to participate and be heard in custody proceedings. Central Authorities should therefore co-operate to the fullest extent possible to provide information in respect of legal, financial, protection and other resources in the requesting State, and facilitate timely contact with these bodies in appropriate cases.

The measures which may be taken in fulfilment of the obligation under Article 7 *h*) to take or cause to be taken an action to protect the welfare of children may include, for example:

- a* alerting the appropriate protection agencies or judicial authorities in the requesting State of the return of a child who may be in danger;
- b* advising the requested State, upon request, of the protective measures and services available in the requesting State to secure the safe return of a particular child;
- c* encouraging the use of Article 21 of the Convention to secure the effective exercise of access or visitation rights.

It is recognised that the protection of the child may also sometimes require steps to be taken to protect an accompanying parent.

The maintenance of statistics

- 1.14 Central Authorities are encouraged to maintain accurate statistics concerning the cases dealt with by them under the Convention, and to make annual returns of statistics to the Permanent Bureau in accordance with the standard forms established by the Permanent Bureau in consultation with Central Authorities.
- 1.15 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.

Promoting good practices

- 1.16 Contracting States to the Convention should co-operate with each other and with the Permanent Bureau to develop a good practice guide 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.

PART II - SECURING STATE COMPLIANCE WITH CONVENTION OBLIGATIONS

Implementation

- 2.1 The national and regional legal frameworks, in which the Convention has to operate, are subject to sometimes significant changes. The same applies to technological means, which could potentially facilitate the operation of the Convention. It is therefore suggested that implementation, whether national or regional, should always be seen as a continuing process of development and improvement, even if the text of the Convention itself remains unchanged.

Standard questionnaire for newly-acceding States

- 2.2 In order to assist newly-acceding States to implement the Convention effectively, and to provide relevant information to existing Contracting States in considering whether to accept accessions in accordance with Article 38 of the Convention, the Special Commission gives its approval to a questionnaire to be addressed to newly acceding States, on the following understandings:

- a* that the Permanent Bureau would make the questionnaire available on the Hague Conference website and draw it to the attention of States which are known to be considering accession or which have recently acceded to the Convention;
- b* that it should be made clear that the provision of a response to the questionnaire is not compulsory but is recommended;
- c* that it would be for the State addressed to decide whether to communicate any response it makes through the Permanent Bureau to other Contracting States, or directly to such States as it may choose;
- d* that existing Contracting States which have already acceded to the Convention might also use this facility, if they so wish, as a possible means of expediting the process of acceptance in their case.

- 2.3 The approved questionnaire is as follows:

I Implementing legislation

- (a) Is implementing legislation necessary to bring the Convention into force in domestic law?*
- (b) If so, has the necessary legislation been enacted, and is it in force? (Please provide a copy or indicate where copies of the legislation may be obtained.)*

II Locating children

Please indicate the agencies involved and the processes available for the location of missing children in your country.

III Central Authority

- (a) The designation and contact details of the Central Authority.*
- (b) Contact persons within the Central Authority, languages spoken, contact details for each.*

- (c) *Please indicate measures taken to ensure that the Central Authority is in a position to carry out the functions set out in Article 7 of the Convention?*

IV Judicial procedures

- (a) *Which courts/administrative bodies within your system have been given jurisdiction to consider applications for return orders (and questions of access) under the Convention?*
- (b) *What measures exist to ensure that return applications will be dealt with expeditiously at first instance and on appeal?*
- (c) *What facilities are available to foreign applicants to assist them in bringing their applications before the courts, and in particular is legal aid available and, if so, on what conditions?*

V Enforcement procedures

What procedures and measures exist for the enforcement of:

- (a) *a return order?*
- (b) *a contact/access order?*

VI Substantive law

- (a) *What are the legal criteria by which custody and contact determinations are made?*
- (b) *Is there a difference in the legal status of mothers and fathers in custody or contact cases?*

VII Social services and child protection services

Please describe the services which exist for the assessment, care and protection of children in the context of international child abduction.

Please indicate the services available for the protection (if necessary) of returning children, as well as the services available (including legal advice and representation) to a parent accompanying the child on return.

VIII Information and training

What measures are being taken to ensure that persons responsible for implementing the Convention (e.g. judges and Central Authority personnel) have received appropriate information and training? (Note: the Permanent Bureau may be contacted for information in relation to forms of assistance which may be available for this purpose.)

Monitoring and review

- 2.4 The Special Commission reaffirms the value of Special Commission meetings to review the operation of the Convention, and regards the four-year cycle for general reviews as satisfactory.
- 2.5 The Special Commission supports the holding of additional meetings to address specific issues when these are clearly shown to be necessary.

- 2.6 In order to enable less wealthy Contracting States to be represented at Special Commission meetings, the Secretary General should, when convoking a meeting, invite Contracting States to consider giving support to specific States or contributing to a common fund.
- 2.7 Established Central Authorities are encouraged to explore ways of sharing their expertise and experiences with other Central Authorities when requested to do so.
- 2.8 Central Authorities should explore mechanisms for improving the flow of information to the Permanent Bureau (and vice-versa) with a view to identifying and solving potential problems and assisting the process of monitoring.
- 2.9 Central Authorities are encouraged, in addressing any practical problems concerning the proper functioning of the Convention, to engage in dialogue with one another. Where a group of Central Authorities share a common problem, consideration should be given to joint meetings which might in some cases be facilitated by the Hague Conference.
- 2.10 The Special Commission notes the increase in recent years in the holding of judicial (and other) seminars and conferences at the national, regional and international levels and underlines the importance of such meetings and the contribution which they make to the development of the mutual understanding and confidence between judges necessary to support the effective functioning of the Convention.

PART III - JUDICIAL PROCEEDINGS, INCLUDING APPEALS AND ENFORCEMENT ISSUES, AND QUESTIONS OF INTERPRETATION

Courts organisation

- 3.1 The Special Commission calls upon Contracting States to bear in mind the considerable advantages to be gained by a concentration of jurisdiction to deal with Hague Convention cases within a limited number of courts.
- 3.2 The progress already made in certain Contracting States, as well as the consideration now being given to this matter in others, is welcomed. Where a concentration of jurisdiction is not possible, it is particularly important that judges concerned in proceedings be offered appropriate training or briefing.

Speed of Hague procedures, including appeals

- 3.3 The Special Commission underscores the obligation (Article 11) of Contracting States to process return applications expeditiously, and that this obligation extends also to appeal procedures.
- 3.4 The Special Commission calls upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications.
- 3.5 The Special Commission calls for firm management by judges, both at trial and appellate levels, of the progress of return proceedings.

The provision of legal aid and advice

- 3.6 In States where an applicant for a return order is in effect unable to bring his/her application promptly before the courts in the requested State, this constitutes a serious hindrance to the rapid and efficient operation of the Convention. The Special Commission encourages such States to intensify their efforts to obtain legal counsel or advisers in order to avoid serious prejudice to the interests of the children involved.

Manner of taking evidence

- 3.7 Rules and practices concerning the taking and admission of evidence, including the evidence of experts, should be applied in return proceedings with regard to the necessity for speed and the importance of limiting the enquiry to the matters in dispute which are directly relevant to the issue of return.

Procedures for hearing the child, and determining whether the child objects to return

- 3.8 There are considerable differences of approach to the question of interviewing the child concerned. Some States have strong reservations about the appropriateness of interviewing young children in connection with return applications. Where it is appropriate and necessary to do so, it is desirable that the person interviewing the child should be properly trained or experienced and should shield the child from the burden of decision-making.

Methods and speed of enforcement

- 3.9 Delays in enforcement of return orders, or their non-enforcement, in certain Contracting States are matters of serious concern. The Special Commission calls upon Contracting States to enforce return orders promptly and effectively.
- 3.10 It should be made possible for courts, when making return orders, to include provisions to ensure that the order leads to the prompt and effective return of the child.
- 3.11 Efforts should be made by Central Authorities, or by other competent authorities, to track the outcome of return orders and to determine in each case whether enforcement is delayed or not achieved.

PART IV - INTERPRETATION OF KEY CONCEPTS

Approach to interpretation

- 4.1 The Convention should be interpreted having regard to its autonomous nature and in the light of its objects.
- 4.2 The Special Commission emphasises the continuing importance as an aid to the interpretation and understanding of the Convention of the Explanatory Report by Elisa Pérez-Vera, and notes the value of a recent translation of the Report into Spanish.

Article 13, paragraph 1 b)

- 4.3 The Article 13, paragraph 1 b), "grave risk" defence has generally been narrowly construed by courts in the Contracting States, and this is confirmed by the relatively small number of return applications which were refused on this basis according to the Statistical Analysis of Applications made in 1999 (Prel. Doc. No 3, March 2001). It is in keeping with the objectives of the Convention, as confirmed in the Explanatory Report by Elisa Pérez-Vera (at paragraph 34), to interpret this defence in a restrictive fashion.

Consent and acquiescence (Article 13, paragraph 1 a))

- 4.4 Efforts to achieve an amicable resolution of the issues should not be construed as giving rise to acquiescence or consent.

Article 20

- 4.5 The Special Commission notes that there have been very few reported cases in which a return order has been refused on the basis of Article 20, and that no such cases were reported in the Statistical Analysis of Applications made in 1999 (Prel. Doc. No 3, March 2001).

PART V - ISSUES SURROUNDING THE SAFE AND PROMPT RETURN OF THE CHILD (AND THE CUSTODIAL PARENT, WHERE RELEVANT)

Safe return orders

- 5.1 Contracting States should consider the provision of procedures for obtaining, in the jurisdiction to which the child is to be returned, any necessary provisional protective measures prior to the return of the child.

Criminal proceedings

- 5.2 The impact of a criminal prosecution for child abduction on the possibility of achieving a return of the child is a matter which should be capable of being taken into account in the exercise of any discretion which the prosecuting authorities have to initiate, suspend or withdraw charges.

Immigration matters

- 5.3 Contracting States should, as far as possible, take measures to ensure that, save in exceptional cases, the abducting parent will be permitted to enter the Country to which the child is returned for the purpose of taking part in legal proceedings concerning custody or protection of the child.

The provision of legal aid and advice

- 5.4 Contracting States should take measures to ensure that parents who participate in custody proceedings after a child's return are given adequate access to a country's legal system to adequately present their case.¹

¹ States are reminded of the *Hague Convention of 25 October 1980 on International Access to Justice*, which *inter alia* generalizes the principles of Article 25 of the Child Abduction Convention.

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, for example via conference call facilities.
- 5.7 The Permanent Bureau should continue to explore the practical mechanisms for facilitating direct international judicial communications.

PART VI - CROSS FRONTIER ACCESS/CONTACT

- 6.1 The Special Commission recognises the deficiencies of the Convention in achieving the objective of securing protection for rights of access in transfrontier situations. This is regarded by Contracting States as a serious problem requiring urgent attention in the interests of the children and parents concerned.
- 6.2 The Special Commission recommends that the Permanent Bureau should carry out further consultations with Member States of the Hague Conference, as well as Contracting States to the 1980 Convention, on the basis of the Preliminary Report on "Transfrontier Access/Contact and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction" (Prel. Doc. No 4 of March 2001) together with the Report (to be drawn up by the Permanent Bureau) on this Special Commission. The Permanent Bureau should proceed to the completion of the Final Report in accordance with the decision of the Special Commission on General Affairs and Policy of the Conference (8-12 May 2000). Other developments at the global and regional levels will be taken into account. The decision to be taken by the Commission on General Affairs and Policy of the Hague Conference (at the Nineteenth Session in June 2001) on the further steps which may be appropriate should reflect the serious nature of the problem and the need for urgent action.

PART VII – MATTERS OF A GENERAL NATURE*The 1996 Hague Convention on Child Protection*

- 7.1 The Special Commission recognises the potential advantages 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* as an adjunct to the 1980 Convention, and recommends that Contracting States should consider ratification or accession.

Encouraging further ratifications and accessions

- 7.2 Endeavours should continue to be made to encourage ratifications of, and accessions to, the 1980 Convention by States willing and able to undertake the Convention obligations. Contracting States are encouraged to arrange meetings at the regional level for this purpose.

Decisions on relocation

- 7.3 Courts take significantly different approaches to relocation cases, which are occurring with a frequency not contemplated in 1980 when the Convention was drafted. It is recognised that a highly restrictive approach to relocation applications may have an adverse effect on the operation of the 1980 Convention.

PART VIII – INCADAT, RESEARCH AND THE JUDGES' NEWSLETTER*The International Child Abduction Database (INCADAT)*

- 8.1 The Special Commission welcomes with enthusiasm the establishment by the Permanent Bureau of the International Child Abduction Database and congratulates all those responsible for its development. INCADAT will be of significant assistance to the judiciary, Central Authorities, the legal profession, as well as individuals affected by or interested in child abduction. Contracting States are encouraged to collaborate with the Permanent Bureau to explore possible sources of funding (including partnership funding) or material assistance to assist in the completion of INCADAT and to secure its position for the future.

Research

- 8.2 The Special Commission recognises the value of research, including socio-legal research, into the operation of the Convention and into the outcomes of cases dealt with under the Convention. It records its appreciation to the authors of Preliminary Document No 3 "A Statistical Analysis of Applications made in 1999 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction".

The Judges' Newsletter on International Child Protection

- 8.3 The Special Commission supports the publication and circulation by the Permanent Bureau of the Judges' Newsletter on International Child Protection.

GENERAL CONCLUSION

The Special Commission recognises that the Convention in general continues to work well in the interests of children and broadly meets the needs for which it was drafted.

The Hague, 20 April 2001