

**RAPPORT SUR LES SERVICES ET STRATÉGIES DE LA CONFÉRENCE DE LA HAYE DE  
DROIT INTERNATIONAL PRIVÉ EN RELATION AVEC LA CONVENTION DE LA HAYE DE 1980  
SUR L'ENLÈVEMENT D'ENFANTS ET LA CONVENTION DE LA HAYE DE 1996 SUR LA  
PROTECTION DES ENFANTS, Y COMPRIS LE DÉVELOPPEMENT DE PROGRAMMES  
RÉGIONAUX ET LE PROCESSUS DE MALTE**

*établi par le Bureau Permanent*

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**REPORT ON THE SERVICES AND STRATEGIES PROVIDED BY THE HAGUE CONFERENCE  
ON PRIVATE INTERNATIONAL LAW IN RELATION TO THE 1980 HAGUE CHILD ABDUCTION  
CONVENTION AND THE 1996 HAGUE CHILD PROTECTION CONVENTION,  
INCLUDING THE DEVELOPMENT OF REGIONAL PROGRAMMES AND THE MALTA PROCESS**

*drawn up by the Permanent Bureau*

*Document préliminaire No 12 de décembre 2011 à l'intention de la  
Commission spéciale de janvier 2012 sur le fonctionnement pratique de la  
Convention Enlèvement d'enfants de 1980 et de la  
Convention Protection des enfants de 1996*

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Special Commission of January 2012 on the practical operation of the  
1980 Hague Child Abduction Convention and the  
1996 Hague Child Protection Convention*

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## I. INTRODUCTION

1. This Report offers an overview of the services and strategies provided by the Hague Conference on Private International Law, often through or with the assistance of its Secretariat, the Permanent Bureau, in relation to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter, the "1980 Convention") and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (hereinafter, the "1996 Convention"). It also summarises, where relevant, the comments about these services provided by States<sup>1</sup> in their replies to Preliminary Document No 1, the "General Questionnaire on the practical operation of the 1980 and 1996 Conventions" (hereinafter, "Questionnaire I").<sup>2</sup>

2. It is hoped that this Report will facilitate discussion regarding these services at Part II of the Sixth Meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions<sup>3</sup> and will enable further guidance to be provided on priorities based on the limited resources available.

## II. A SUMMARY OF THE SERVICES PROVIDED BY THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW IN CONNECTION WITH THE 1980 AND 1996 CONVENTIONS

### A. In general: promoting the effective implementation and operation of the 1980 and 1996 Conventions and promoting ratifications / accessions

3. It is (self-)evident, in light of increasing global interdependence, that the 1980 and 1996 Conventions, as instruments which seek to protect children internationally, achieve their aims most effectively if ratified / acceded to by as many States as possible. The responses to Questionnaire I highlighted the importance placed by States on encouraging wider ratification of, or accession to, these Conventions.<sup>4</sup> In addition, the Conclusions and Recommendations from Part I of the Sixth Meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions (1-10 June 2011)<sup>5</sup> welcomed the

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<sup>1</sup> Please note: Prel. Doc. No 1 of November 2010 (*infra* note 2) was circulated to all National and Contact Organs of Members of the Hague Conference on Private International Law, as well as to non-Member Contracting States to the 1980 and 1996 Conventions. The reference to "States" in the context of Prel. Doc. No 1 responses will therefore include, where relevant, Member Contracting States to the 1980 and / or 1996 Conventions, non-Member Contracting States to the 1980 and / or 1996 Conventions and the European Union. (It may also, on occasion, include reference to Member *non*-Contracting States, principally in relation to questions concerning the 1996 Convention where Members which are Contracting States to the 1980 Convention may have provided comments.)

<sup>2</sup> "Questionnaire concerning the practical operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection Of Children*", Prel. Doc. No 1 of November 2010 for the attention of the Special Commission of June 2011, available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Questionnaires and responses". The responses particularly relevant to this document are those found at questions 21 and 22 of Prel. Doc. No 1. The responses received to Prel. Doc. No 1 are available on the Hague Conference website, *ibid*. To date [November 2011], 48 responses have been received (including one from International Social Service).

<sup>3</sup> Full title: Part II of the Sixth Meeting of the Special Commission on the practical operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention. Hereinafter, "the 2012 Special Commission (Part II)".

<sup>4</sup> See responses to Prel. Doc. No 1 (*op. cit.* note 2), at question 22.1 (h).

<sup>5</sup> Full title: Part I of the Sixth Meeting of the Special Commission on the practical operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention. Hereinafter, "the 2011 Special Commission (Part I)". The Conclusions and Recommendations of the 2011 Special Commission (Part I) are available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

increase in the number of signatures / ratifications / accessions to the 1980 and 1996 Conventions and emphasised the importance of the promotion of the Conventions, stating:

“The Special Commission calls for further efforts by Contracting States and by the Permanent Bureau, through the provision of advice and assistance, to extend the numbers of Contracting States.”<sup>6</sup>

4. The Hague Conference, often through its Permanent Bureau, undertakes activities which aim to disseminate information, educate and engage with States to ensure that the Conventions are as widely ratified or acceded to as possible. The growth in the number of Contracting States to both Conventions has been significant: in the 10 years from 2001 to 2011, there have been 20 accessions and two successions to the 1980 Convention (bringing the total number of States Parties to 86), and 21 ratifications of, and nine accessions to, the 1996 Convention (bringing the total number of States Parties to 33). In relation to the specific role of the Permanent Bureau in promoting ratifications or accessions, the responses to Questionnaire I revealed that all of the States which responded supported the role of the Permanent Bureau in this regard, many describing promotion of the Conventions as a central or “key” aspect of the Permanent Bureau’s work.<sup>7</sup> This was confirmed in the Conclusion and Recommendation from the 2011 Special Commission (Part I) set out *supra*.<sup>8</sup>

5. Ratification of, or accession to the Conventions, however, is only a first step. Both Conventions require States to give careful consideration to implementation measures and, as instruments involving administrative and judicial co-operation, the Conventions depend for their effective practical operation on knowledgeable and trained Convention actors (e.g., Central Authorities and judiciaries). Another important part of the Hague Conference’s work is therefore to assist Contracting States, or those States considering ratification of or accession to the Conventions, with implementing and maintaining good Convention practices.

6. The work of the Hague Conference in terms of (1) promoting wide ratification of / accession to the Conventions, as well as (2) promoting good Convention practices, takes many forms which are discussed in more detail in this Report.

## **B. Specific services provided by the Hague Conference on Private International Law**

### **(i) Special Commission meetings**

7. Special Commission meetings are vitally important to ensure the effective practical operation of the 1980 and 1996 Conventions. The meetings provide a forum for discussion which facilitates the promotion of good Convention practices and is designed to help overcome operational challenges regarding the Conventions, including by

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<sup>6</sup> At para. 1.

<sup>7</sup> *Op. cit.* note 2. In particular, New Zealand: it is a “key role for the Bureau”; Mexico: “this should be considered as a priority”; Israel: “this is a critical service”; Finland: “it could be seen as one of the most important duties of the Permanent Bureau.”; Estonia: “this is of vital importance”; Canada: “Providing information on the Conventions to those States that are unfamiliar with them and encouraging ratification should continue.” Austria: “very useful”; Argentina: “an approach from the Permanent Bureau to those States not parties to the Convention in order to encourage its analysis and ratification is necessary”. Germany and Canada emphasised that promotion of wider ratification / accession must also stress the Convention obligations and must not encourage States that do not have the necessary structures in place to ratify / accede to the Conventions.

<sup>8</sup> *Op. cit.* note 5.

recommending further measures to be taken to ameliorate any difficulties. The meetings also offer an important opportunity for those operating the Conventions to meet and share experiences.

8. In the Final Act of the Sixteenth Session of the Hague Conference on Private International Law (signed on 20 October 1988) the Secretary General was instructed "to convene a Special Commission on the operation of the ... [1980 Convention]". It was noted in the Conclusions of that first Special Commission meeting that: "periodic meetings on the operation of the Convention would be particularly useful as a means of improving the co-operation and effectiveness of Central Authorities and would thereby help to ensure the appropriate operation and implementation of the Convention. It recommends therefore that the Secretary General convene a second session of the Special Commission before 1993."<sup>9</sup> The second Special Commission meeting in 1993 concluded that the Special Commission should occur periodically.<sup>10</sup>

9. There have now been six Special Commission meetings to review the practical operation of the 1980 Convention. The meetings have been held approximately every four years since the first Special Commission meeting in 1989.<sup>11</sup> In addition, a Special Commission meeting took place from 27 September to 1 October 2002 to follow up on matters arising from the Fourth Meeting of the Special Commission. This Special Commission differed from the four-yearly reviews in that it had a specific mandate.<sup>12</sup>

10. The 2006 Special Commission meeting was the first Special Commission which also discussed the 1996 Convention.<sup>13</sup> The focus of these discussions was on the *implementation* of the 1996 Convention. The 2011 Special Commission (Part I) was the first meeting specifically tasked with reviewing the practical operation of the 1996 Convention, as well as the 1980 Convention.

11. The responses to Questionnaire I highlighted the importance attached to Special Commission meetings by States and, in particular, by the Convention actors.<sup>14</sup>

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<sup>9</sup> Para. VII of the "Conclusions on the main points discussed by the Special Commission", adopted on 26 October 1989 (see Overall Conclusions of the 1989 Special Commission, available on the Hague Conference website, *ibid.*).

<sup>10</sup> "Conclusions on certain important points discussed by the Special Commission", at Conclusion 10, within the Report of the 1993 Special Commission (available on the Hague Conference website, *ibid.*).

<sup>11</sup> The First Meeting of the Special Commission to review the operation of the 1980 Convention was held from 23 to 26 October 1989; the Second Meeting was held from 18 to 21 January 1993; the Third Meeting was held from 17 to 21 March 1997; the Fourth Meeting was held from 22 to 28 March 2001; the Fifth Meeting was held from 30 October to 9 November 2006; and the Sixth Meeting was held from 1 to 10 June 2011 (Part I) and from 24 to 31 January 2012 (Part II). Hereinafter, the Special Commission meetings are referred to simply by their year, *e.g.*, the "2006 Special Commission", etc.

<sup>12</sup> See the Report and Conclusions of the 2002 Special Commission, available on the Hague Conference website, *ibid.*, at paras 1 and 2. The specific mandate was: to consider the draft Guides to Good Practice on Central Authority Practice (Part I) and Implementing Measures (Part II), the Permanent Bureau's final report on transfrontier access / contact (including a preliminary discussion of transfrontier access / contact issues relating to some States with Sharia based law), and to consider a report on direct international judicial communications in the context of the Convention.

<sup>13</sup> In relation to the 1996 Convention, Art. 56 of the Convention states: "the Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention".

<sup>14</sup> Although no specific question was asked in relation to Special Commission meetings, see, *e.g.*, the response of New Zealand to question 22.1 (f) of Prel. Doc. No 1 (*op. cit.* note 2) and, in general, the responses to question 22.2 (*e.g.*, the response of Canada).

12. Today, bilateral and regional<sup>15</sup> meetings of Convention actors organised either on an *ad hoc* or a regular basis supplement Special Commission meetings.<sup>16</sup> It is clear from the responses to Questionnaire I that such meetings are extremely valuable. However, it is also apparent from the responses that most Central Authorities wish to have still more opportunities to share information and network. Indeed, an overwhelming majority of Contracting States (42 of 47 replies) responded in the affirmative when asked whether there should be further networking opportunities for Central Authorities (other than Special Commission meetings).<sup>17</sup> In addition, in response to the question concerning what future measures should be taken to improve the operation of the Conventions, a number of responses reaffirmed that an opportunity for Central Authorities to meet more regularly would enhance the operation of the Convention (see also Section III, *infra*).<sup>18</sup> The 2012 Special Commission (Part II) might therefore wish to consider how to ensure more frequent meetings of Central Authorities, perhaps on a regional basis, outside of the Special Commission meetings.<sup>19</sup>

## **(ii) Development of Guides to Good Practice, Handbooks and Implementation Checklists under the 1980 and 1996 Conventions**

### ***The Guides to Good Practice under the 1980 Convention***

13. Discussion at Special Commission meetings regarding the practical operation of the 1980 Convention has often revealed areas where: (1) the insight obtained by those who have been operating the Convention for some time could be of benefit to newly acceding or ratifying States, or even to new Convention actors (*e.g.*, new Central Authority personnel or judges) in existing Contracting States; and (2) the implementation and operation of the Conventions could be improved across all Contracting States if good practices were identified and followed. In light of this, Special Commission meetings have often recommended that a Guide to Good Practice should be developed and published, with the aim that such a Guide will assist Contracting States, and those States considering accession or ratification, in their implementation and operation of the Convention.

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<sup>15</sup> *E.g.*, from the responses to Prel. Doc. No 1 (*ibid.*), it is apparent that the Central Authorities from the Nordic countries meet once a year to exchange experiences (see Denmark's response to question 21.2) and the Central Authorities of the European Union now meet annually in the forum of the European Judicial Network.

<sup>16</sup> See the responses to Prel. Doc. No 1 (*ibid.*) at question 3.11. The importance of such meetings was emphasised at the 2006 Special Commission, where it was stated: "The Special Commission supports efforts directed at improving networking among Central Authorities. The value of conference calls to hold regional meetings of Central Authorities is recognised." Conclusions and Recommendations of the 2006 Special Commission (available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention"), at para. 1.1.10.

<sup>17</sup> See the responses to Prel. Doc. No 1 (*op. cit.* note 2) at question 3.13 – positive responses regarding more regular opportunities to network were received from: Albania, Argentina, Australia, Austria (though no matter of high urgency), Bahamas, Belgium (the EU experience demonstrates the utility of this type of meeting), Brazil, Canada (supports a strategic approach), Chile, China (Hong Kong Special Administrative Region), Colombia, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Estonia, Finland, Germany (but it is a question of workload, resources and priorities to what extent it is possible), Israel, Lithuania, Luxembourg, Mauritius, Mexico, Monaco, Montenegro, the Netherlands, Norway, Panama, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Switzerland, Ukraine, United Kingdom (England and Wales, Scotland), United States of America, Zimbabwe.

<sup>18</sup> See, for example, the responses of Canada and China (Hong Kong SAR) to question 22.2 of Prel. Doc. No 1 (*ibid.*).

<sup>19</sup> See also Section IV below which outlines States' comments concerning possible future services. A number of States' responses to these questions (question 22 of Prel. Doc. No 1, *ibid.*) mentioned the importance of Special Commission meetings, with one response stating that these meetings should occur more frequently. Also, a number of these responses emphasised the importance of more regular networking events for Convention actors.

14. Pursuant to Special Commission meeting recommendations over the past 10 years, and with the support of the Council on General Affairs and Policy of the Hague Conference,<sup>20</sup> the following Guides to Good Practice under the 1980 Convention have been researched, developed, drafted and published:<sup>21</sup>

- a. *Part I* on Central Authority Practice and *Part II* on Implementing Measures. These Guides were both published in 2003 in English, French and Spanish.<sup>22</sup> They were developed pursuant to the recommendation of the 2001 Special Commission<sup>23</sup> and were presented to the 2002 Special Commission for consideration prior to publication.<sup>24</sup>
- b. *Part III* on Preventive Measures was published in 2005 in English, French and Spanish.<sup>25</sup> It was recommended that this Guide be developed following the 2002 Special Commission<sup>26</sup> and its publication was welcomed by the 2006 Special Commission.<sup>27</sup>
- c. *Part IV* on the Enforcement of Return Orders was published in 2010 in English, French and Spanish. This Guide also has its origins in the recommendation of the 2002 Special Commission meeting,<sup>28</sup> which asked the Permanent Bureau to gather information on the practices in this area and to prepare a report on the subject with a view to the development of a Guide. Following detailed research,<sup>29</sup> guiding principles were subsequently proposed to the 2006 Special Commission meeting. These principles were supported and the Permanent Bureau, with the assistance of a group of experts, was invited to draw up a draft Guide based upon the principles.<sup>30</sup> Once completed, this draft Guide was circulated to all Members of the Hague Conference and Contracting States to the 1980 Convention for their comment before finalisation and publication.<sup>31</sup>

15. The *General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children* (hereinafter, "the Transfrontier Contact Guide") was published in

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<sup>20</sup> See, e.g., the Conclusions of Commission I on General Affairs and Policy of the Nineteenth Diplomatic Session of April 2002, at para. 5, Conclusions of the Special Commission held from 1-3 April 2003 on General Affairs and Policy of the Conference, at para. 3, Conclusions of the Special Commission of April 2004 on General Affairs and Policy of the Conference, at para. 15, Report of the Special Commission on General Affairs and Policy of the Conference of March-April 2005 (Prel. Doc. No 32A of May 2005), at p. 30, Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (1-3 April 2008), at p. 1, Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (31 March – 2 April 2009), at p. 1, Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (7-9 April 2010), at p. 1 (all available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "General Affairs").

<sup>21</sup> For a more detailed history of the lengthy process behind the drafting of all the Guides to Good Practice under the 1980 Convention, see the Introduction to each of the Guides, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

<sup>22</sup> Part I has also been translated into Russian (unofficial, external translation) and Part II has also been translated into Bosnian, Croatian and Russian (unofficial, external translations).

<sup>23</sup> See the Conclusions and Recommendations of the 2001 Special Commission (available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention"), at para. 1.16.

<sup>24</sup> See the Report and Conclusions of the 2002 Special Commission (*op. cit.* note 12) and the recommendation for publication at para. 1(a).

<sup>25</sup> Also translated into Arabic, German and Russian (unofficial, external translations).

<sup>26</sup> *Ibid.*, at para. 1(b).

<sup>27</sup> Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 16), at para. 1.2.1.

<sup>28</sup> *Op. cit.* note 12, at para. 1(c).

<sup>29</sup> The research included a comparative legal study by the Permanent Bureau and empirical research by Professor Nigel Lowe of Cardiff University (at the request of the Hague Conference, and sponsored by the International Centre for Missing and Exploited Children).

<sup>30</sup> Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 16), at para. 1.5.2.

<sup>31</sup> See Hague Conference circular letter L.c. ON No 34(09) of 26 October 2009.



2008 in English, French and Spanish.<sup>32</sup> The Transfrontier Contact Guide differs from the other Guides in that it contains general principles as well as examples of good practice. Further, unlike the other Guides mentioned *supra*, which concern the 1980 Convention only, the Transfrontier Contact Guide also refers to relevant provisions of the 1996 Convention and provides guidance concerning their application.

16. Currently a Guide to Good Practice on Mediation (*Part V* of the Guide to Good Practice under the 1980 Convention) is in development. The draft Guide was considered by the 2011 Special Commission (Part I), which welcomed the Guide. The draft Guide is currently being revised in light of these discussions and is to be circulated to States for further comment before being published.<sup>33</sup>

### **Responses regarding the Guides to Good Practice**

17. In Questionnaire I, States were asked to comment on their use of the Guides to Good Practice under the 1980 Convention. First, they were asked in what ways, if at all, they have used the Guides to assist in implementing or improving the operation of the 1980 Convention in their State.<sup>34</sup> The responses highlighted the many and varied ways in which the Guides have been put to use. For example, several States commented that the Guides have been used to assist with the drafting of their domestic implementing legislation and also when establishing their Central Authority.<sup>35</sup> Other States (particularly, it seems, where the 1980 Convention had been in force for some time at the date of publication of the Guide), commented that the Guides have been used as a “cross-check” to ensure that their implementing legislation and operational practices were in compliance with the guidance.<sup>36</sup> This approach is in accordance with the principle of “progressive implementation” stated in the Guides, whereby Contracting States should continually review and improve the implementation and operation of the 1980 Convention. Indeed, in this regard, several States gave specific examples where domestic legislation was reviewed and amended in light of a Guide.<sup>37</sup>

18. Several States also mentioned that the Guides are sometimes used to support co-operation in specific cases in their State (*e.g.*, when a Central Authority is requesting another Central Authority to carry out certain functions, it may make reference to a Guide to illustrate that this is a proper function for the Central Authority to undertake).<sup>38</sup> The Guides have also been used by several States in their training provided to Convention actors (both internally within the State, and also where training or assistance is provided to other States, including to newly acceding States).<sup>39</sup> Other States mentioned that they refer lawyers, judges and other Convention actors who need information to the Guides.<sup>40</sup> Lastly, one State mentioned that the Guides provide some criteria which aid the determination in that State of whether to accept the accession of a newly acceding State.<sup>41</sup>

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<sup>32</sup> Also translated into Arabic (unofficial, external translation).

<sup>33</sup> See the Conclusions and Recommendations of the 2011 Special Commission (Part I) (*op. cit.* note 5) at paras 58-59.

<sup>34</sup> See the responses to question 11 of Prel. Doc. No 1 (*op. cit.* note 2), in particular question 11.1.

<sup>35</sup> *E.g.*, the Bahamas, Chile, Georgia and Ukraine.

<sup>36</sup> *E.g.*, Australia, Canada, China (Hong Kong SAR), Czech Republic, Denmark, Germany, Poland and United States of America.

<sup>37</sup> *E.g.*, Hungary (regarding Part IV on Enforcement), Romania, Slovakia (also regarding Part IV) and Ukraine (regarding Parts III and IV).

<sup>38</sup> *E.g.*, Argentina, Bulgaria, Canada, Mexico, Monaco and Norway.

<sup>39</sup> *E.g.*, Brazil, Canada (used in the preparation of speaking materials), China (Hong Kong SAR), Finland, Poland, Portugal, Luxembourg, New Zealand and United States of America.

<sup>40</sup> *E.g.*, Argentina, Cyprus.

<sup>41</sup> United States of America.

19. The Conclusions and Recommendations of the 2011 Special Commission (Part I) emphasised the value and importance of the Guides to Good Practice.<sup>42</sup>

### **Future Guides to Good Practice?**

20. In terms of future topics for Guides to Good Practice, consideration has already been given, at the 2011 Special Commission (Part I), to the possibility of a Guide to Good Practice being developed on the implementation of Article 13(1) *b*) of the 1980 Convention and on the treatment of issues of domestic and family violence raised in return proceedings.<sup>43</sup> Following the Conclusion and Recommendation of Part I, this issue will be further considered in the discussions at the 2012 Special Commission (Part II). The responses to Questionnaire I also included suggestions for future Guides to Good Practice in the following areas: immigration issues and their handling by Central Authorities;<sup>44</sup> and co-operation between Central Authorities and the exchange of information after the return of the child.<sup>45</sup>

### **The Practical Handbook on the 1996 Convention and the Implementation Checklist**

21. The Practical Handbook on the 1996 Convention and the annexed implementation checklist were drafted in response to the request made to the Permanent Bureau at the 2006 Special Commission.<sup>46</sup> The focus of the Practical Handbook is necessarily different from the Guides to Good Practice under the 1980 Convention because it does not concentrate to the same degree upon previously established "good practice" under the Convention to guide future practice since, as yet, there is little practice upon which to draw. Instead, the Handbook provides an accessible and easily digestible practical guide to the 1996 Convention. Through the use of plain language, relevant and comprehensive case examples and simple flowcharts, it promotes a clear understanding of how the 1996 Convention is intended to operate in practice, helping to ensure that good practice under the Convention develops from the outset in Contracting States.

22. The Permanent Bureau began its work, requested by the 2006 Special Commission, by drafting a document focusing on practical advice for States that were considering

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<sup>42</sup> *Op. cit.* note 5, at para. 52: "The Special Commission recognises the value of all parts of the Guide to Good Practice under the 1980 Convention and the General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children under the 1980 and 1996 Conventions. It encourages the wide dissemination of the Guides. The Special Commission encourages States to consider how best to disseminate the Guides within their States and, in particular, to the persons involved in implementing and operating the Conventions."

<sup>43</sup> See the Conclusions and Recommendations of the 2011 Special Commission (Part I) (*ibid.*), at para. 38, where, at sub-para. (a) one of the proposals considered was the drafting of a Guide to Good Practice on the implementation of Art. 13(1) *b*).

<sup>44</sup> Brazil and Mexico. In relation to this suggestion, it should be noted that other Guides do deal with this issue at least in part, e.g., Part I on Central Authority Practice deals with certain immigration issues at para. 6.3 in relation to the safe return of the child, and the Transfrontier Contact Guide also deals with the issue of the assistance Central Authorities may provide to help parents or children obtain visas to ensure contact is not obstructed. The recent 2011 Special Commission (Part I) also made recommendations in relation to the handling of immigration issues in 1980 Convention cases (*ibid.*), at paras 30-31.

<sup>45</sup> Czech Republic. Note the discussion at Part I of the 2011 Special Commission meeting on the issue of exchanging information following the return of a child (see Minutes No 3 of the meeting: "Some experts indicated that there was an ongoing role for Central Authorities to obtain information on the well-being of the child after return whereas other experts saw that the role of the Central Authority ends with the return of the child.")

<sup>46</sup> "[...] in consultation with Member States of the Hague Conference and Contracting States to the 1980 and 1996 Conventions, [...] begin work on the preparation of a practical guide to the 1996 Convention which would: a) provide advice on the factors to be considered in the process of implementing the Convention into national law, and b) assist in explaining the practical application of the Convention." Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 16), at para. 2.2.

implementing the Convention into national law. The "implementation checklist" was finalised in 2009 and now appears as an annex to the Practical Handbook. A draft of the Handbook was circulated for consideration in 2009.<sup>47</sup> This draft was then revised in light of the comments received. The revised draft Practical Handbook was subsequently circulated prior to the 2011 Special Commission (Part I) as Preliminary Document No 4 and was considered at the meeting.<sup>48</sup> The meeting welcomed the Handbook as, "a valuable document which provides beneficial guidance to persons involved in implementing and operating the Convention".<sup>49</sup> The Handbook is currently being revised in light of the discussions at the Special Commission and, pursuant to the recommendations of the meeting,<sup>50</sup> will be published in 2012.

### **(iii) Conferences, seminars and trainings**

23. The Hague Conference on Private International Law, through its Permanent Bureau, is frequently asked to help organise or participate in conferences, seminars and trainings which promote accession to or ratification of the 1980 and 1996 Conventions and their effective implementation and operation. These events may be bilateral, regional or global and may concentrate on a specific Hague Convention (or even a specific topic within a Convention) or a broader range of Conventions (*e.g.*, the Conventions in relation to international child protection). Often these requests specifically seek Permanent Bureau participation rather than using external experts who might not be perceived as neutral. The Permanent Bureau's role may vary from directly educating and informing, to acting as a facilitator at bilateral seminars. Given the limited resources available, the Hague Conference cannot always accommodate requests for participation in or assistance with such events.<sup>51</sup> Examples of some of the events organised or attended by members of the Permanent Bureau during the year 2010 are mentioned below.

24. Several regional conferences took place in 2010 with the aim of promoting the 1980 and 1996 Conventions in these regions and / or of improving the practical operation of the Conventions among the participating States. For example, the Seminar on Cross-Frontier Child Protection in the Southern and Eastern African Region was held in Pretoria, South Africa. The Seminar was organised by the Hague Conference in co-operation with the Government of the Republic of South Africa and with the support of UNICEF.<sup>52</sup> A Nordic Baltic Seminar on International Child Abduction was held in Tallinn, Estonia.

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<sup>47</sup> The draft Handbook was circulated to the National and Contact Organs of the Members of the Hague Conference on Private International Law, as well as to the Central Authorities of Contracting States to the 1996 and 1980 Conventions. A hard copy of the draft Handbook was also sent to Ambassadors of non-Member Contracting States to the 1996 and 1980 Conventions.

<sup>48</sup> "Revised draft Practical Handbook on the operation of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children*", Prel. Doc. No 4 of May 2011 for the attention of the 2011 Special Commission (Part I) (available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention" and "Preliminary Documents / Information Documents" (under 6th Special Commission meeting, Part I, June 2011).

<sup>49</sup> Conclusions and Recommendations of the 2011 Special Commission (Part I) (*op. cit.* note 5), at para. 53.

<sup>50</sup> *Ibid.*, at paras 54 and 55.

<sup>51</sup> Further, it should also be noted that often members of the Permanent Bureau are only able to attend such events if their travel / accommodation costs are covered by the organisers or other external funding bodies.

<sup>52</sup> It was attended by high officials, judges, academics, researchers and other experts from Angola, Botswana, Ghana, Kenya, Madagascar, Malawi, Mauritius, Namibia, South Africa, Swaziland, Uganda, Zambia and Zimbabwe, as well as the African Committee on the Rights and Welfare of the Child, UNICEF and the Permanent Bureau of the Hague Conference.

Organised by the Central Authorities of Estonia and Norway, the goal of the event was to exchange experiences and ensure capacity building in the Nordic-Baltic States, as well as to improve the practical operation of the 1980 Convention in these States. Members of the Permanent Bureau took part in a regional conference organised by the German IRZ Foundation in Bonn, Germany. A regional seminar was also held in Belgrade, Serbia, with the support of the Asser Institute, and a member of the Permanent Bureau spoke on the importance of the 1980 Convention for the region. The Morocco Judicial Seminar took place in Rabat, followed by a judicial training of 50 Moroccan family law judges on the practical operation of the 1980 Convention.<sup>53</sup>

25. The value placed on conferences, seminars and trainings by States was illustrated in the recent answers to Questionnaire I.<sup>54</sup> In response to the question of "whether judicial or other seminars or conferences at the national, regional and international levels have supported the effective functioning of the Conventions", all States responded in the affirmative. Many States responded that such events were valuable tools in supporting the effective implementation and operation of the Conventions.<sup>55</sup> Many stated that such events had contributed to a better understanding and a more uniform application of the Conventions in their State.<sup>56</sup> In addition, specific benefits were reported as a result of such events. For example, some States reported that events had enhanced co-operation between States in individual cases,<sup>57</sup> some reported that they had led to specific changes in practices (e.g., the concentration of jurisdiction in certain States,<sup>58</sup> participation in direct judicial communications<sup>59</sup> and better awareness of the need for expedition<sup>60</sup>) and some stated that they provided an important forum for stakeholders to share experiences and build closer networks for better future co-operation.<sup>61</sup> Some States also explained that the conclusions and recommendations from events had been useful for internal future training and guidance of those working with the Conventions.<sup>62</sup> Two Central

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<sup>53</sup> The Morocco Judicial Seminar on Cross-Border Protection of Children and Families, hosted by the Supreme Court of the Kingdom of Morocco with the Hague Conference on Private International Law and the Technical Assistance and Information Exchange ("TAIEX") instrument of the European Commission. Participating States and organisations were: Belgium, Egypt, France, Germany, Jordan, Lebanon, Morocco, the Netherlands, Spain, Switzerland, Tunisia, Turkey, the United Kingdom, the European Commission, Unicef, the League of Arab States, and the International Social Service. Within the framework of the Malta Process, the Seminar discussed cross-border protection of children and families and, in particular, the 1996 Convention. This international seminar was followed by a judicial training of 50 Moroccan family law judges on the practical operation of the 1980 Convention (the Convention entered into force in Morocco on 1 June 2010). The training was provided by Members of the Permanent Bureau, in collaboration with the Supreme Court of Morocco and TAIEX. Other training events, seminars and conferences which members of the Permanent Bureau participated in during 2010 include: a meeting with judges on international child abduction in Sofia, Bulgaria in September 2010; participation in a seminar organised by the Albanian Centre of International Law and the IRZ Foundation in Tirana, Albania to promote the ratification of further Hague Conventions by Albania as well as their effective implementation; participation in a symposium in Tokyo in March 2010 on the 1980 Convention, with the purpose of informing members of civil society about child abduction issues and the potential for the 1980 Convention; speaking in July 2010 at the Japanese Federation of Bar Associations meeting in Tokyo on the 1980 Convention; participation in the German-Anglophone Judges Conference in Berlin, Germany; participation in the "Nordic Conference on the child's perspectives in family matters in a globalised world", organised and funded by the Danish Ministry of Justice; co-organising and participating in the "International Judicial Conference on Cross-Border Family Relocation", which resulted in the "Washington Declaration on International Family Relocation".

<sup>54</sup> See the responses to questions 21.1 and 21.2 of Prel. Doc. No 1 (*op. cit.* note 2).

<sup>55</sup> It should be noted that the focus of responses was on the 1980 Convention, rather than the 1996 Convention, presumably due to the fact that there have, to date, been more events on the 1980 Convention due to the greater number of States Parties.

<sup>56</sup> E.g., China (Hong Kong SAR), Finland, France, Israel, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, United Kingdom (Scotland).

<sup>57</sup> E.g., China (Hong Kong SAR), Germany.

<sup>58</sup> E.g., Germany, Slovakia.

<sup>59</sup> E.g., United States of America.

<sup>60</sup> E.g., Portugal.

<sup>61</sup> E.g., Canada, Chile, China (Hong Kong SAR), the Netherlands, Switzerland, Ukraine.

<sup>62</sup> E.g., Argentina, New Zealand (also making the point that conclusions and recommendations from conferences / seminars attended by non-official delegates should be framed and promoted so as to be clear that the content does not necessarily reflect the views of the Member States), Norway, Spain, United States of America.

Authorities made reference to conclusions and recommendations in their daily work and stated that this had contributed to better co-operation in specific cases.<sup>63</sup>

26. In addition, the responses to Questionnaire I were generally very supportive of the role of the Permanent Bureau in relation to this work,<sup>64</sup> with some States reporting that the Permanent Bureau's role was extremely useful<sup>65</sup> and necessary<sup>66</sup> and others describing positive experiences or reflections from events involving members of the Permanent Bureau.<sup>67</sup> Two States placed particular importance on assistance and training being given by the Permanent Bureau to *newly* acceding or ratifying States.<sup>68</sup> One State mentioned the critical importance it placed, in particular, on "judicial education seminars and conferences, which often show direct results in the form of appropriate return orders under the Abduction Convention".<sup>69</sup> Two States emphasised the need to consider the issue in light of the resource constraints of the Permanent Bureau and the discussions concerning "technical assistance" taking place more generally within the Hague Conference.<sup>70</sup>

#### **(iv) Supporting and facilitating judicial communications**

##### ***International Hague Network of Judges***<sup>71</sup>

27. The creation of the International Hague Network of Judges specialised in family matters (hereinafter "the Hague Network") was first proposed at the 1998 De Ruwenberg Seminar for judges on the international protection of children.<sup>72</sup> It was recommended that the relevant authorities (e.g., court presidents or other officials, as appropriate, within the various legal cultures) in different jurisdictions designate one or more members of the judiciary to act as a channel for communication and to act as a liaison with their national Central Authorities, with other judges within their jurisdictions and with judges in other Contracting States, in respect, at least initially, of issues relevant to the 1980 Convention. It was felt that the development of such a network would facilitate communications and co-operation between judges at the international level and would assist in the effective operation of the 1980 Convention. After more than 10 years, it is now recognised that there is a broad range of international instruments, both regional and multilateral, in relation to which direct judicial communications could play a role beyond the 1980 Convention.

28. Since its inception, a number of judicial conferences have supported the expansion of the Hague Network. The 2001, 2006 and 2011 (Part I) Special Commission meetings to review the operation of the 1980 Convention discussed these developments and the

<sup>63</sup> E.g., Hungary, the Netherlands.

<sup>64</sup> See generally the responses to question 22.1 (f) of Prel. Doc. No 1 (*ibid.*).

<sup>65</sup> E.g., Austria, Czech Republic ("very useful"), Germany ("valuable"), Hungary, Mexico ("the assistance from the Permanent Bureau has been definitive to the efforts in Mexico for a better understanding domestically of the restitution process"), the Netherlands, Romania, United States of America (assistance by the Permanent Bureau has been an "excellent tool").

<sup>66</sup> E.g., Israel, Mexico, Panama, Ukraine, United States of America.

<sup>67</sup> E.g., Chile, China (Hong Kong SAR), Cyprus, Denmark, Finland, Norway.

<sup>68</sup> E.g., Hungary, Israel.

<sup>69</sup> United States of America response to question 22.1 (f) of Prel. Doc. No 1 (*ibid.*).

<sup>70</sup> E.g., Canada, New Zealand. See, in this regard, The Background Note to the Working Group for Technical Assistance (2011) (available on request).

<sup>71</sup> For additional information on direct judicial communications, see P. Lortie, "Report on judicial communications in relation to international child protection", Prel. Doc. No 3 B of April 2011 drawn up for the attention of the 2011 Special Commission (Part I), available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "Child Abduction".

<sup>72</sup> Information on the 1998 De Ruwenberg Judicial Seminar is available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children" and "Other Judicial Seminars".

Conclusions and Recommendations from these three meetings demonstrate support for the Hague Network and its further development.<sup>73</sup> In January 2009, the Joint Conference of the European Commission-Hague Conference on Direct Judicial Communications on Family Law Matters and the Development of Judicial Networks (hereinafter “the Joint EC-HCCH Conference”),<sup>74</sup> which took place in Brussels, emphasised the value of direct judicial communications in international child protection cases, as well as the development of international, regional and national judicial networks to support such communications. On that latter point, the Joint EC-HCCH Conference invited the different networks to operate in a complementary and co-ordinated manner in order to achieve synergies, and, as far as possible, to observe the same safeguards in relation to direct judicial communications. The Hague Network currently includes more than 60 judges from 46 States in all continents.<sup>75</sup>

29. The role of a Hague Network Judge is to be a link between his or her colleagues at the domestic level and other members of the Network at the international level. There are two main communication functions exercised by members of the Network. The first communication function is of a general nature (*i.e.*, not case specific). It includes the sharing of general information from the Hague Network or the Permanent Bureau with colleagues in the jurisdiction and assisting with the reverse flow of information. It may also encompass participation in international judicial seminars. The second communication function consists of direct judicial communications with regard to specific cases, the objective of such communications being to address any lack of information that the competent judge has about the situation and legal implications in the State of the habitual residence of the child. In this context, members of the Hague Network may be involved in facilitating arrangements for the prompt and safe return of the child, including the establishment of urgent or provisional measures of protection and the provision of information about custody or access issues. These communications will often result in considerable time saving and better use of available resources, all in the best interests of the child.

### ***Direct judicial communications***<sup>76</sup>

30. During the 2001 Special Commission the issue of the feasibility and limitations of direct judicial communications and the development of an international network of judges was addressed in the context of issues surrounding the safe and prompt return of the child (and the custodial parent, where relevant). The Special Commission adopted,

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<sup>73</sup> Conclusions and Recommendations of the 2001 Special Commission (*op. cit.* note 23); Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 16); Conclusions and Recommendations of the 2011 Special Commission (Part I) (*op. cit.* note 5).

<sup>74</sup> The Conclusions and Recommendations of the 15 to 16 January 2009 Joint EC-HCCH Judicial Conference are available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under “Child Abduction Section” then “Judicial Communications” and in Annex B to Prel. Doc. No 3 B of April 2011 (*op. cit.* note 71). These Conclusions and Recommendations were adopted by consensus by more than 140 judges from more than 55 jurisdictions representing all continents. Volume XV of *The Judges’ Newsletter* is dedicated to the January 2009 Joint EC-HCCH Judicial Conference. It is available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under “Conventions” then “Convention No 28” and “HCCH Publications”.

<sup>75</sup> Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China (Hong Kong SAR), Colombia, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Gabon, Germany, Guatemala, Honduras, Iceland, Ireland, Israel, Kenya, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Romania, Singapore, South Africa, Spain, Sweden, United Kingdom (England and Wales, Northern Ireland and Scotland), United States of America, Uruguay and Venezuela. A current list of members of the International Hague Network of Judges is available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under “Child Abduction Section” then “The International Hague Network of Judges”.

<sup>76</sup> For additional information on the International Hague Network of Judges, see P. Lortie, “Report on judicial communications in relation to international child protection”, Prel. Doc. No 3 B of April 2011 (*op. cit.* note 71).

among others, Conclusions and Recommendations that focused on international judicial communications between judges or between judges and other authorities.<sup>77</sup> The Conclusions and Recommendations encouraged Contracting States to identify a judge or judges able to facilitate communications between judges at the international level. Furthermore, the Conclusions and Recommendations identified commonly accepted safeguards in Contracting States for direct judicial communications. Finally, the Permanent Bureau was asked to continue exploring the practical mechanisms for facilitating direct cross-border judicial communications.

31. A Preliminary Report on direct international judicial communications was presented to the 2002 Special Commission<sup>78</sup> and a more elaborate Report on judicial communications was presented to the 2006 Special Commission.<sup>79</sup> The 2002 Report and 2006 Report were respectively based on responses to a 2002 Questionnaire<sup>80</sup> and a 2006 Questionnaire.<sup>81</sup> Both Reports drew on conclusions and recommendations of various international judicial conferences and seminars, which had examined this subject, academic literature, existing national laws and regional norms in force at the time, as well as *The Judges' Newsletter*.<sup>82</sup> In essence, the 2006 Report offered an inventory of the different mechanisms in place to facilitate direct judicial communications internationally. It also identified the difficulties and constraints that States and judges may face with these mechanisms.

32. Between 2006 and 2011, the Permanent Bureau, at the request of the 2006 Special Commission, drew up the "Emerging Guidance regarding the Development of the International Hague Network of Judges and Draft General Principles for Judicial Communications, including Commonly Accepted Safeguards for Direct Judicial Communications in Specific Cases, within the context of the International Hague Network of Judges" (hereinafter the "Emerging Guidance and Draft General Principles").<sup>83</sup>

33. The Emerging Guidance and Draft General Principles have been developed in stages. A preliminary draft was prepared by the Permanent Bureau in early 2008, taking into account the 2002 and 2006 Reports mentioned above. The preliminary draft was then submitted to a group of experts which met at the Permanent Bureau in July 2008

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<sup>77</sup> See Conclusions and Recommendations of the 2001 Special Commission (*op. cit.* note 23), Nos 5.5, 5.6 and 5.7.

<sup>78</sup> P. Lortie, "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*", Prel. Doc. No 6 of August 2002 for the attention of the 2002 Special Commission, available on the Hague Conference website under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention" and "Preliminary Documents".

<sup>79</sup> P. Lortie, "Report on judicial communications in relation to international child protection", Prel. Doc. No 8 of October 2006 for the attention of the 2006 Special Commission, available on the Hague Conference website, *ibid.*

<sup>80</sup> "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 the Permanent Bureau, Prel. Doc. No 2 of January 2002 for the attention of the 2002 Special Commission, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Questionnaires & Responses".

<sup>81</sup> "Questionnaire concerning the practical operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (including questions on implementation of the *Hague Convention of 19 October 1996 on Jurisdictions, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*)", drawn up by the Permanent Bureau, Prel. Doc. No 1 of April 2006 for the attention of the 2006 Special Commission, available on the Hague Conference website, *ibid.*

<sup>82</sup> *The Judges' Newsletter on International Child Protection*, Vol. III (Autumn 2001) and Vol. IV (Summer 2002) focused particularly on direct international communications between judges.

<sup>83</sup> Prel. Doc. No 3 A of March 2011 for the attention of the 2011 Special Commission (Part I), available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "Child Abduction". During Part I of the Special Commission, it was decided to change the term "rules" by the term "emerging".

with a view to providing a basis for further discussion and consultation at the 2009 Joint EC-HCCH Conference. On 28 June 2010, the Permanent Bureau gathered together a group of international experts drawn from the judiciary to develop further the Emerging Guidance and Draft General Principles in light of the Conclusions and Recommendations of the 2009 Joint EC-HCCH Conference.<sup>84</sup> Finally, all of the members of the Hague Network were consulted in January 2011 on an improved version of the Emerging Guidance and Draft General Principles before it was submitted for the attention of the 2011 Special Commission (Part I). At this meeting, the Special Commission gave its general endorsement to the Emerging Guidance and Draft General Principles subject to the Permanent Bureau revising the document in light of the discussion within the Special Commission.<sup>85</sup> The Special Commission meetings over the years have emphasised the importance of direct judicial communications in international child protection and international child abduction cases.<sup>86</sup>

### ***The Judges' Newsletter on International Child Protection***

34. *The Judges' Newsletter* arose from the need expressed by judges attending the First Judges' Seminar on the International Protection of the Child in June 1998 in De Ruwenberg in the Netherlands. The first *Judges' Newsletter* was published in spring 1999. Since that time, the Newsletter has played a significant role in the development of international judicial co-operation in international child protection matters. Moreover, it has served as a stimulus for direct judicial communications. Special Commissions on the practical operation of the 1980 and 1996 Conventions have successively acknowledged and supported the essential role of this journal,<sup>87</sup> most recently at the 2011 Special Commission (Part I), where it was concluded that: "The Special Commission supports the continued publication of *The Judges' Newsletter on International Child Protection* and expresses its appreciation to LexisNexis for its support in publishing and distributing the Newsletter."<sup>88</sup>

35. First published in English and French, the two official languages of the Hague Conference, *The Judges' Newsletter* was published in Spanish from autumn 2004 to 2009 and, for one issue, in Arabic (Vol. VIII). In 2009, the Permanent Bureau unfortunately had to cease publication of a Spanish version of the Newsletter due to limited resources. However, contributors remain welcome to send submissions to the Permanent Bureau in Spanish for translation into English and French. The recent 2011 Special Commission (Part I) concluded: "The Special Commission urges that every effort should be made to make the Newsletter available in Spanish and encourages States to consider providing support for this purpose."<sup>89</sup>

36. Distributed to 100 judges at the outset, the Newsletter today reaches close to 900 in more than 115 States and is available on the Hague Conference website in an electronic format that was updated in 2010. The Permanent Bureau has also been working on a legal index of all the volumes of *The Judges' Newsletter* in order to allow readers to access easily articles relevant to their particular interests.

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<sup>84</sup> *Supra*, note 74.

<sup>85</sup> See Conclusion and Recommendation 68 of the 2011 Special Commission (Part I) (*op. cit.* note 5).

<sup>86</sup> See Conclusions and Recommendations 5.5 and 5.6 of the 2001 Special Commission (*op. cit.* note 23), Conclusions and Recommendations 1.6.1.-1.6.6. of the 2006 Special Commission (*op. cit.* note 16), and Conclusions and Recommendations 64-66 of the 2011 Special Commission (Part I) (*op. cit.* note 5).

<sup>87</sup> Conclusion and Recommendation No 1.6.9 of the 2006 Special Commission (*op. cit.* note 16); Conclusion and Recommendation No 4 of the 2002 Special Commission (*op. cit.* note 12); Conclusion and Recommendation No 8.3 of the 2001 Special Commission (*op. cit.* note 23).

<sup>88</sup> Conclusions and Recommendations of the 2011 Special Commission (Part I) (*op. cit.* note 5), at para. 73. The publisher, Lexis Nexis, was specifically thanked at the 2011 Special Commission (Part I) due to the fact that they have formatted, published and distributed *The Judges' Newsletter pro bono* (for free) since 2001. Without the support of Lexis Nexis, it would be very difficult to continue to publish *The Judges' Newsletter*.

<sup>89</sup> *Ibid.*, at para. 74.



37. In addition to Hague Conference news, *The Judges' Newsletter* provides a unique forum for the publication of articles of interest to judges regarding cross-border family law matters. True to its aim, the journal has published numerous articles through which sitting judges have shared experiences of direct judicial communications. These experiences have ranged from initiating contact and monitoring direct communications, to ensuring the independence of judges as well as the rights of parties. Also to be found in previous issues of the Newsletter are articles on case law developments concerning the 1980 Convention in various jurisdictions. In addition, as part of the research on tools and methods for responding to practical difficulties encountered during international child abduction proceedings, judges have studied the criminal aspects of return proceedings in the Newsletter (Vol. IV, p.60) and have demonstrated the utility of international mediation in preventing such conflicts (Vol. XI, p.55). Far from being a discussion forum limited to Contracting States to the 1980 Convention, the Newsletter has always sought articles from as wide a field as possible, previously publishing, for example, views on international child abduction from non-Contracting States.<sup>90</sup>

38. In Questionnaire I, States were asked to provide comments on *The Judges' Newsletter*.<sup>91</sup> The majority of States which responded to this question reported that they found the publication very useful.<sup>92</sup> Several States also commented upon its informative nature and stated that it provided particularly valuable information on practice for professionals working in the field.<sup>93</sup> *The Judges' Newsletter* continues, therefore, to provide a valuable forum for judges and other professionals involved in cross-border family law issues.

**(v) The Hague Conference website (< [www.hcch.net](http://www.hcch.net) >) and the specialised "Child Abduction Section"**

39. The Permanent Bureau maintains and continually updates the Hague Conference website, including the specialised "Child Abduction section" of the website (linked from the homepage of the Hague Conference). The Hague Conference website is the "gateway" to a comprehensive database regarding all Hague Conventions<sup>94</sup> and the Hague Conference's work. Aside from the detailed information available on each Convention, the website contains a number of specialised sections, one of which is the "Child Abduction section". This specialised section brings together all of the relevant documentation on the 1980 Convention in one webpage. The website and the specialised section are available in English and French. In addition, with the generous funding of some Hague Conference Members, the website and the specialised Child Abduction section are also available in Spanish and German.<sup>95</sup> Furthermore, a new sub-section entitled "Latin American Section" will be available on the Child Abduction section of the website in the near future (in English, French and Spanish). This sub-section will provide information on matters relating to international child abduction in the Latin American

<sup>90</sup> See, in this regard, particularly the volumes of *The Judges' Newsletter* which focused on the Malta Process (Vols VIII, XI and XVI).

<sup>91</sup> Question 22.1 (b) of Prel. Doc. No 1 (*op. cit.* note 2).

<sup>92</sup> Argentina, Australia, Austria, Belgium, Brazil, Canada, China (Hong Kong SAR), Colombia, Cyprus, Czech Republic, Estonia, Finland, Germany, Hungary, Israel, Luxembourg, Mauritius, Mexico, the Netherlands, New Zealand, Norway, Panama, Portugal, Romania, Slovenia, Spain, Switzerland, United Kingdom (England and Wales, Scotland), United States of America.

<sup>93</sup> *E.g.*, Estonia, Finland, Hungary, Luxembourg, Mexico, New Zealand, Romania, United Kingdom (England and Wales, Scotland), United States of America.

<sup>94</sup> Including the constantly updated treaty administration (such as status information on the Conventions).

<sup>95</sup> Some documents are also available in other languages, *e.g.*, the Guides to Good Practice – see *supra*.

region, such as the implementation of the 1980 Convention, regional and national initiatives, as well as seminars and meetings held in the region.

40. In Questionnaire I, States were asked for their views on the specialised Child Abduction section of the Hague Conference website.<sup>96</sup> The responses were generally very positive, with many States commenting on the utility of the specialised section and the helpful, practical information contained therein. Several States commented that they used the webpage frequently in practice<sup>97</sup> and that it is very useful to have all the information collected in one place. Some States reported that they considered the webpage user-friendly<sup>98</sup> and transparent.<sup>99</sup>

**(vi) Databases, case management systems and the further development of information technology systems**

41. At the meeting of the Special Commission on General Affairs and Policy of the Conference in April 2006, the following Conclusion and Recommendation was adopted:

“The Special Commission welcomed the ongoing efforts of the Permanent Bureau in relation to the use and the development of information technology systems in support of existing and draft Hague Conventions in the areas of legal co-operation and family law. Member States were encouraged to collaborate actively with the Permanent Bureau in the development and maintenance of these systems and to explore possible sources of funding including through the supplementary budget, partnership funding or material assistance.”<sup>100</sup>

42. The Council reiterated its support in this regard in 2007, 2008, 2009 and 2010.<sup>101</sup>

***The International Child Abduction Database (INCADAT)***

43. The International Child Abduction Database – INCADAT (< [www.incadat.com](http://www.incadat.com) >) – was established by the Permanent Bureau in 1999 in order to provide accessibility for judges, Central Authorities, practitioners and other interested persons to leading decisions rendered by national courts in respect of the 1980 Convention. This followed the discontinuation by The Hague Asser Institute of its series of volumes on case law concerning the Hague Conventions, “*Les Nouvelles Conventions*” (five volumes published between 1976 and 1996). Over the past years the database has contributed considerably to the promotion of mutual understanding and consistency of interpretation among the Contracting States to the 1980 Convention. At the same time, INCADAT, which also contains a small number of decisions in “non-Hague” abduction cases, offers some guidance in cases to which the 1980 Convention does not apply. INCADAT currently contains summaries of approximately 1000 decisions from more than 40 jurisdictions in English and French. A majority are also available in Spanish.

<sup>96</sup> Question 22.1 (c) of Prel. Doc. No 1 (*op. cit.* note 2).

<sup>97</sup> *E.g.*, Argentina, Brazil, Canada, Denmark, New Zealand, Norway, United Kingdom (England and Wales).

<sup>98</sup> Canada.

<sup>99</sup> Slovakia.

<sup>100</sup> Conclusions adopted by the Special Commission of 3-5 April 2006 on General Affairs and Policy of the Conference (Prel. Doc. No 11 of June 2006 for the attention of the Council of April 2007 on General Affairs and Policy of the Conference, available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under “Work in Progress” then “General Affairs”), at para. 6.

<sup>101</sup> See the Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (2-4 April 2007), at para. 7; the Conclusions and Recommendations adopted by the Council (1-3 April 2008), at p. 2; the Conclusions and Recommendations adopted by the Council (31 March – 2 April 2009), at p. 3; and Conclusions and Recommendations adopted by the Council (7-9 April 2010), at p. 5; all available on the Hague Conference website, *ibid.*

44. Following a complete revision of the INCADAT database and website, a new version of INCADAT was launched in 2010. The new website complies with modern standards and facilitates easy navigation through the different sections and sub-pages of INCADAT. New search-tool functions enable users to access information in a more effective way. Furthermore the provision of information relevant to international child abduction has been extended. One of the major improvements is the introduction of the "Case Law Analysis" Section, which provides users with a comprehensive case law commentary regarding key topics of the 1980 Convention in an easy to access "folder system" sorted by legal topic.<sup>102</sup>

45. The Permanent Bureau is working on the enlargement of INCADAT's coverage in co-operation with its consultants and contributors from different Contracting States to the 1980 Convention. The Permanent Bureau wishes: (1) to increase the number of leading decisions from already represented States, as well as (2) to extend the database to include case law from not yet represented Contracting States. With these goals in mind, the Permanent Bureau would like to be able to build and service a stable and reliable network of INCADAT Correspondents and to hold an INCADAT Correspondents meeting in The Hague. However, unfortunately development initiatives such as these involve an allocation of resources which is increasingly difficult within the Permanent Bureau. Indeed, even the daily, routine administration of INCADAT, which involves a significant workload due to the increased size of the database and its increased sophistication, currently causes difficulty. In addition to outside consultants, INCADAT requires a full-time staff member at the Permanent Bureau to administer, maintain and develop the database, which is not possible with the existing staff available.<sup>103</sup>

46. In Questionnaire I, States were asked for their views on INCADAT.<sup>104</sup> Many responses indicated that INCADAT was a very useful resource<sup>105</sup> and stated that it was particularly valuable for judges and lawyers in practice. One State considered it a "vital tool"<sup>106</sup> and another considered it "the most important tool in assisting with the uniform application of the Convention".<sup>107</sup>

47. At the recent 2011 Special Commission (Part I), the possible extension of INCADAT to the 1996 Convention was discussed. The meeting concluded:

"The Special Commission recognises the great value of INCADAT and welcomes further exploration of the extension of INCADAT to the 1996 Convention..."<sup>108</sup>

The extension of INCADAT to cover case law under the 1996 Convention has significant implications for the limited resources available. It therefore requires further exploration regarding its feasibility in the current circumstances (particularly bearing in mind what has been stated above regarding the support needed for the current database). However, the importance of INCADAT for the consistent interpretation and application of the 1980 Convention has been demonstrated and thus its potential benefit for the 1996 Convention is obvious.

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<sup>102</sup> This "Case Law Analysis" section is written by Professor Peter McEleavy, INCADAT Legal Consultant.

<sup>103</sup> Due to the current situation concerning resources for INCADAT, consideration is being given to the possibility of seeking external funding for INCADAT as a temporary measure.

<sup>104</sup> Prel. Doc. No 1 (*op. cit.* note 2), at question 22.1 (a).

<sup>105</sup> *E.g.*, Argentina, Belgium, Canada, Chile, China (Hong Kong SAR), Cyprus, Czech Republic, Denmark, Dominican Republic, Finland, Georgia, Israel, Mauritius, the Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Romania, Serbia, Slovakia, Spain, Switzerland, Ukraine, United Kingdom (England and Wales, Scotland), United States of America.

<sup>106</sup> United States of America.

<sup>107</sup> Finland.

<sup>108</sup> Conclusions and Recommendations of the 2011 Special Commission (Part I) (*op. cit.* note 5), at para. 56.

***The International Child Abduction Statistical Database (INCASTAT)***<sup>109</sup>

48. The 2001, 2006 and 2011 (Part I) Special Commission meetings concluded and recommended:

“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.”<sup>110</sup>

49. The Permanent Bureau received statistics from Central Authorities using the Standard Forms (A1-2 and B1-2), in paper form, from 1999 to 2006. The examination of statistics reported using these forms revealed that Central Authorities were treating and collecting statistical data in very different manners and that they were interpreting the forms in different ways. These divergences showed that a uniform method should be established in order to be able to compare and analyse meaningfully statistical information from diverse Contracting States. Thus, it was very important to develop an electronic system to help Central Authorities maintain accurate statistics on a regular basis and also to harmonise the collection of statistics under the 1980 Convention.

50. The 2001 Special Commission endorsed a plan proposed by the Permanent Bureau to establish a statistical database (INCASTAT) as a complement to the International Child Abduction Database (INCADAT), and encouraged Contracting States to consider methods by which resources for the project could be made available. The Canadian Government and a Canadian company called WorldReach Software responded to this call for resources by offering to the Hague Conference, free of charge, a case management system (iChild) to track cases under the 1980 Convention and to produce, in electronic format, the Standard Forms (A1-2 and B1-2) established by the Permanent Bureau.<sup>111</sup> After testing iChild with a group of Contracting States on a central server, it was decided to implement iChild at the local level in the different Contracting States as this solution offers the best security to protect sensitive, confidential data. The Permanent Bureau then proceeded to develop the International Child Abduction Statistical Database (INCASTAT) in order to collect digitally information transmitted using the Standard Forms (A1-2 and B1-2) in one central location.

51. From 2004 until 2007, with the assistance of several voluntary contributions made by Members to the Supplementary Budget,<sup>112</sup> the Permanent Bureau was able to develop INCASTAT (in both English and French), a secured Internet-based database to be used by Central Authorities to transmit to the Permanent Bureau their annual statistics under the 1980 Convention in accordance with the Standard Forms (A1-2 and B1-2). INCASTAT

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<sup>109</sup> Additional information concerning INCASTAT is available in the following documents: “Present and future developments of information technology systems in support of Hague Conventions”, drawn up by the Permanent Bureau, Prel. Doc. No 3 of February 2006 for the attention of the Special Commission of April 2006 on General Affairs and Policy of the Conference, available on the Hague Conference website at < www.hcch.net > under “Work in Progress” then “General Affairs”; and, “Report on the iChild pilot and the development of the international child abduction statistical database, INCASTAT”, drawn up by the Permanent Bureau, Prel. Doc. No 9 of October 2006 for the attention of the 2006 Special Commission, available on the Hague Conference website at < www.hcch.net > under “Child Abduction Section” then “Preliminary Documents”.

<sup>110</sup> Conclusions and Recommendations of the 2011 Special Commission (Part I) (*op. cit.* note 5), at para. 22 (re-affirming Recommendation No 1.14 of the 2001 Special Commission and Recommendation No 1.1.16 of the 2006 Special Commission).

<sup>111</sup> See below for additional information concerning the iChild Case Management System.

<sup>112</sup> Canada, United Kingdom and United States of America.

also allows Central Authorities and the Permanent Bureau to generate statistical analysis and a variety of charts from the data collected.<sup>113</sup>

52. It is believed that only about 15% of the more than 110 Central Authorities are currently using INCASTAT to maintain statistics under the Convention. The feedback from these Central Authorities is that INCASTAT is a very simple tool to use and is much more time efficient than the previous paper forms. Comments received from Central Authorities since the launch of the database have also led to improvements in the system which were implemented during the spring of 2011. For example, it is now possible to include a file reference number for each case (only visible by the Contracting State concerned) in order to facilitate the tracking of information concerning cases that cover more than one year. Furthermore, it is now possible to select a start date and an end date for each case and the system will automatically calculate the number of days a case was before the competent authority.

53. In Questionnaire I, States were asked for their views on INCASTAT.<sup>114</sup> The responses were generally very positive, with many States commenting on the utility of collecting statistics for the important purpose of the on-going practical monitoring of the Convention.

54. The 2011 Special Commission (Part I) recommended that the Permanent Bureau, in conjunction with certain interested Contracting States, explore the possibility of automated data migration to INCASTAT. A pilot project in this regard was initiated with the United States of America in August 2011. An oral report on this pilot will be provided during the 2012 Special Commission (Part II).

55. The Special Commission also recommended that one statistical questionnaire be developed that is capable of being completed online which combines the data currently sought for INCASTAT with the data last sought for the statistical analysis of cases arising in 2008.<sup>115</sup> A report concerning this project will be made available separately.

### ***iChild Case Management System***<sup>116</sup>

56. In partnership with WorldReach Software Canada, the Permanent Bureau, in consultation with interested States,<sup>117</sup> has completed the development of the iChild software.<sup>118</sup> The iChild software was originally developed by WorldReach Software Corporation as a module for the then-named COSMOS software (the latest version of this software is called "AssistReach"), a database system used by Consular Affairs of the Government of Canada for case management and for tracking Canadian citizens in need of assistance all over the world. iChild is an electronic case management tool which may

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<sup>113</sup> Since October 2007, all Central Authorities under the 1980 Convention have been attributed usernames and passwords to access their INCASTAT account.

<sup>114</sup> Question 22.1 (d) of Prel. Doc. No 1 (*op. cit.* note 2).

<sup>115</sup> See Professor N. Lowe, Cardiff University Law School, "A statistical analysis of applications made in 2008 under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*", Part I – Global Report and Part II – Regional Report, Prel. Docs Nos 8 A and 8 B (updated) of November 2011 for the attention of the 2011 Special Commission (Part I). These two documents are available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Work in Progress" then "Child Abduction".

<sup>116</sup> Additional information concerning iChild is available in the following documents: "Present and future developments of information technology systems in support of Hague Conventions" (*op. cit.* note 109); and, "Report on the iChild pilot and the development of the international child abduction statistical database, INCASTAT" (*ibid.*).

<sup>117</sup> The following States have participated in the first phase of the pilot: Argentina, Australia, Canada (British Columbia and Quebec), China (Hong Kong SAR), Germany, Ireland, New Zealand, Panama, South Africa, Spain, Sweden, Switzerland, United Kingdom (Scotland) and United States of America (NCMEC). The following States have participated in the second phase of the pilot: Argentina, Australia, Canada (British Columbia and Quebec), Germany, Ireland, the Netherlands, New Zealand, Sweden and Switzerland.

<sup>118</sup> WorldReach invested its time and resources to modify certain aspects of the software to better accommodate the specific needs of Central Authorities operating under the Child Abduction Convention. The iChild User Guide is available upon request from the Permanent Bureau.

eventually be used on a day-to-day basis by many of the more than 110 international Central Authorities designated under the 1980 Convention. Available in English, French and Spanish, this tool is designed to store and track all essential information concerning a child abduction case. This system will help considerably to improve standards of case management, leading the way towards paperless child abduction case management. The system will also help significantly to improve communication between Central Authorities; it will lead to greater consistency in practice in the different Contracting States to the 1980 Convention. iChild also generates the Annual Statistical Forms (A1-2 and B1-2) relating to the 1980 Convention. In this regard, iChild is a complement to INCASTAT.

57. With regard to the development of iChild and INCASTAT, the 2002 Special Commission recognised the work begun by the Permanent Bureau, with the support of the Canadian Government and WorldReach, and encouraged the continuation of these efforts in co-operation with Contracting States and their Central Authorities.<sup>119</sup>

58. In November 2005, the iChild pilot project was officially launched for a period of one year, with the participation of Central Authorities from Argentina, Australia, Canada (Ontario and Quebec), the Netherlands, New Zealand and Panama. An evaluation of the system was discussed during the 2006 Special Commission. Generally, iChild was found to be easy to use. Most participating Central Authorities were of the view that an electronic system is very useful for record management purposes. However, some indicated that because of legal requirements regarding archiving they could not do away with paper files altogether. Following the functional amendments made to the first version of the software, the second pilot showed that the current version of the software is in line with the text of the 1980 Convention. The participating Central Authorities recommended it for use by all Central Authorities or at least by those which have no electronic system for recording information.

59. At this time, Mexico is completing its implementation of iChild. An oral report of this implementation will be provided during the 2012 Special Commission (Part II). Furthermore, the Permanent Bureau is aware that a number of Contracting States have shown an interest in using iChild during the past few months and that discussions have taken place with WorldReach Software in this respect. Finally, it is important to note that the AssistReach software developed by WorldReach, which includes a version of iChild for consular affairs purposes, is already implemented and in use by the Governments in Canada, Ireland, the Netherlands, New Zealand and the United Kingdom.

#### **(vii) Maintaining the Country Profile for Contracting States to the 1980 Convention**

60. The Country Profile project was initiated by the 2006 Special Commission, following a proposal by Canada.<sup>120</sup> Discussions at the meeting had highlighted "the value of having information concerning the relevant national laws and procedures readily accessible to all States" and endorsed the Country Profile for this purpose.<sup>121</sup> In accordance with the 2006 recommendation, an Expert Working Group was established by the Permanent Bureau to assist with the development of the Country Profile. In July 2009, the Permanent Bureau circulated a first draft Country Profile to members of the Working Group for their comment. The Permanent Bureau subsequently amended and revised the draft Country Profile in light of the experts' comments and also as a result of an internal review and circulated it to Members, as well as to the Central Authorities designated under the 1980

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<sup>119</sup> See the Report of the 2002 Special Commission (*op. cit.* note 12) at p. 44 and the Conclusions and Recommendations (*ibid.*), at para. 6.

<sup>120</sup> See the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 16), at para. 1.1.11.

<sup>121</sup> *Ibid.*

Convention, for their comment. On 10 March 2011 the final Country Profile was sent to Contracting States to complete.

61. It is anticipated that the Country Profile will assist Contracting States in fulfilling their obligations under Article 7 of the 1980 Convention, in particular Article 7(2) e) and i). The Country Profile will also facilitate an efficient exchange of information between States Parties and, in particular, between Central Authorities under the 1980 Convention.

62. To date, 47 of the current 86 Contracting States to the 1980 Convention have submitted responses to the Country Profile and these are available on the Hague Conference website.<sup>122</sup> The 2011 Special Commission (Part I) welcomed the development of the Country Profile for the 1980 Convention and noted the important improvement it makes to information exchange between Central Authorities.<sup>123</sup> The meeting recommended that Contracting States which had not completed their Country Profile do so as soon as possible. Following discussions at the meeting, it was decided that, although it remains the sole responsibility of Contracting States to keep their Country Profiles up-to-date, the Permanent Bureau will send an annual reminder to States in this regard.<sup>124</sup> Any new or updated Country Profiles received will be placed on the Hague Conference website. The meeting also noted that while the Country Profile does not replace the Standard Questionnaire for newly acceding States, States should be encouraged to fill in their Country Profile as soon as practicable following accession or ratification.

63. The completed Country Profiles contain a wealth of information on the practical operation of the 1980 Convention across a large number of Contracting States. The Permanent Bureau has already undertaken an analysis of certain parts of the Country Profiles for the purposes of the 2011 Special Commission (Part I).<sup>125</sup>

#### **(viii) The development and updating of standard forms**

64. The development, publication and updating of standard forms can assist considerably in the operation of a Convention. At the current time, the Permanent Bureau is undertaking work in relation to two standard forms in relation to the 1980 Convention. These projects are briefly outlined below.

65. The issue of standard forms for the 1996 Convention was considered specifically at the 2011 Special Commission (Part I).<sup>126</sup> While Contracting States to that Convention agreed that it was premature to begin work on any standard forms at this stage, it was acknowledged that there may well be areas where such forms could be useful in the future (e.g., the Permanent Bureau identified Art. 40 of the 1996 Convention). Contracting States were invited to send to the Permanent Bureau examples of forms they may develop or use under the 1996 Convention so that this information can be shared with other States, possibly through the website of the Hague Conference.<sup>127</sup>

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<sup>122</sup> At < [www.hcch.net](http://www.hcch.net) > under "Conventions" then "Convention No 28" and "Country Profiles".

<sup>123</sup> See the Conclusions and Recommendations of the 2011 Special Commission (Part I) (*op. cit.* note 5), at paras 24–27.

<sup>124</sup> *Ibid.*

<sup>125</sup> This information was presented orally to the Special Commission meeting during the Permanent Bureau presentations.

<sup>126</sup> See Minutes No 9 of the 2011 Special Commission (Part I).

<sup>127</sup> *Ibid.*

### **Updating the recommended Request for Return (and Access) Model Form**

66. In 2006, the Special Commission meeting reaffirmed “the Recommendation of the Fourteenth Session of the Hague Conference to use the standard Request for Return form,”<sup>128</sup> a form which was adopted together with the 1980 Convention, and recommended “that the Permanent Bureau, in consultation with Contracting States, update[s] the standard Request for Return form.”<sup>129</sup> In the course of 2010, the Permanent Bureau conducted a preliminary analysis of the request for return or access forms under the 1980 Convention currently used by 33 Central Authorities.<sup>130</sup> The results of this analysis were presented at the 2011 Special Commission (Part I).<sup>131</sup>

67. The 2011 Special Commission (Part I) encouraged the Permanent Bureau to continue its work to modernise the “Request for Return” model form and to create a form that can be completed electronically. It also requested that the Permanent Bureau continue its work to develop a standardised Request for Access Model form.<sup>132</sup> Lastly, the meeting noted the importance of different language versions of the forms being made available on the Hague Conference website and, for this purpose, encouraged States to provide the Permanent Bureau with translations.<sup>133</sup>

### **A Model Consent to Travel Form?**

68. The idea to develop a model form for the purposes of giving consent for a minor to travel outside the jurisdiction arose during the preparatory research and consultation with States which was undertaken in the development of the Guide to Good Practice on Preventive Measures (Part III) under the 1980 Convention.<sup>134</sup>

69. Prior to the 2006 Special Commission, Contracting States to the 1980 Convention were asked for their views regarding the desirability of developing such a standardised or recommended consent to travel form.<sup>135</sup> The States that responded generally agreed that there was value in continuing to explore the development of such a form.<sup>136</sup> Following discussion at the 2006 Special Commission meeting, it was recommended that:

<sup>128</sup> Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 16), at para. 1.1.13.

<sup>129</sup> *Ibid.*, at para. 1.1.14.

<sup>130</sup> Argentina, Australia, Austria, Belgium, Brazil, Canada (Prince Edward Island and Quebec), China (Hong Kong SAR), Cyprus, Ecuador, France, Georgia, Germany, Greece, Iceland, Lithuania, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom (England and Wales, Isle of Man, Northern Ireland and Scotland) and United States of America.

<sup>131</sup> Info. Doc. No 4 of May 2011, Revision of the model application form under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, available on the Hague Conference website at < www.hcch.net > under “Child Abduction Section” then “Special Commission meetings on the practical operation of the Convention” and “Preliminary Documents / Information Documents” (under 6th Special Commission meeting, Part I, June 2011).

<sup>132</sup> See Conclusions and Recommendations of the 2011 Special Commission (Part I) (*op. cit.* note 5), at para. 10.

<sup>133</sup> *Ibid.*

<sup>134</sup> In the Guide to Good Practice (at p.10), it was concluded that: “There may be benefit in agreeing a single standardised consent form (in several languages) which would assist those operating border controls so that they would be able to ascertain swiftly if the authorisation to travel has been granted (and in particular that any necessary evidentiary requirements in respect of such authorisation have been satisfied). Moreover, a standardised form of consent would make the consent procedure less burdensome for travellers. [...] A standardised consent form would ensure certainty and consistency.”

<sup>135</sup> “Questionnaire concerning the practical operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*”, Prel. Doc. No 1 of April 2006 (*op. cit.* note 81), at question 45.

<sup>136</sup> Positive responses to question 45 of Prel. Doc. No 1 of April 2006 (*ibid.*) concerning continuing the exploration of possible development of a recommended consent to travel form were received from: Argentina, Australia, Austria, Canada (Saskatchewan, Quebec, Nova Scotia), Chile, China (Hong Kong SAR and Macao SAR), Colombia, Costa Rica, El Salvador, Finland, Ireland, Israel, Latvia, Lithuania, Malta, the Netherlands, New Zealand, Nicaragua, Panama, Poland, Portugal.



"The Permanent Bureau is requested to continue to explore the feasibility and the development of a standardised or recommended permission form in consultation with Contracting States and in co-operation with relevant international organisations which regulate international travel. The Special Commission recognises that it is necessary to have regard in the first instance to the purpose and content of the form. It was agreed that such a form would not be designed to introduce any new substantive rules but rather to operate within existing systems. The form would be non-binding and non-obligatory."<sup>137</sup>

70. At the 2012 Special Commission (Part II), the Permanent Bureau will provide a brief note on the key issues surrounding the development of a model consent to travel form in order to ascertain the views of States regarding whether the project should be continued and, if so, with what priority.<sup>138</sup>

#### **(ix) Responding to requests for assistance received from States,<sup>139</sup> Central Authorities and individuals**

71. In the past year, the Permanent Bureau<sup>140</sup> has responded to over 100 requests for assistance and information in relation to the 1980 and 1996 Conventions. The Permanent Bureau has noted a constant increase in the number of requests received over the past years.

#### ***Requests from States and Central Authorities***

72. Some of the requests received by the Permanent Bureau are from Central Authorities and other State authorities and are requests for general information (*e.g.*, in relation to the status or applicability of the Conventions, or seeking copies of implementing legislation). However, some of these requests also concern specific problems in a particular case (*e.g.*, when the requested Central Authority has not responded to an application).

73. The Permanent Bureau seeks to respond to requests from States as soon as possible. When the request concerns specific problems in a particular case, if requested, the Permanent Bureau contacts the State (usually Central Authority) to encourage co-operation. In such a case, the Permanent Bureau will always make clear to both States (usually Central Authorities) that it does not "police" the operation of the Convention in any way and will encourage the States to communicate directly with each other.

#### ***Requests from individuals***

74. The majority of the requests for assistance received by the Permanent Bureau are from parents and other family members and occasionally their lawyers.<sup>141</sup> These requests are generally made through the contact form on the Hague Conference website.<sup>142</sup> As

<sup>137</sup> See the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 16), at para. 1.2.3.

<sup>138</sup> This document will be made available in due course for the attention of the 2012 Special Commission (Part II).

<sup>139</sup> Usually requests for assistance are received from Contracting States to the 1980 and 1996 Conventions. However, requests may sometimes also be received from States considering ratification of or accession to these Conventions, or those States in the process of ratifying or acceding to either Convention.

<sup>140</sup> The Latin American Office also responds to a considerable number of requests for assistance which have not been included in this figure.

<sup>141</sup> It should be noted that, in contrast, the Latin American Office receives a majority of its requests for assistance from States and Central Authorities.

<sup>142</sup> See "Contact" on the Hague Conference website home page (< [www.hcch.net](http://www.hcch.net) >).

with requests received from States and Central Authorities, some concern specific cases (for example, complaints about the outcome of return proceedings or actions of particular courts or Central Authorities). Most individual requests, however, are more general requests for assistance concerning international child abduction, international access / contact, preventive measures, international relocation, custody disputes and other similar family law issues. In 2010, about a quarter of requests concerned a situation involving at least one non-Hague Convention State (*i.e.*, a State not Party to either the 1980 or 1996 Convention).

75. Requests from individuals are answered as the workload of the Permanent Bureau permits, with priority being given to urgent requests (for example, where an international child abduction has allegedly just occurred or where it appears that a child is in danger). In responding to requests from individuals, the Permanent Bureau explicitly states in every response that it does not have the mandate or the means to intervene in particular cases or provide legal advice. The approach of the Permanent Bureau is simply to provide general information on the operation of the Conventions, if relevant, and to refer the individual to the relevant Central Authority(ies) (if applicable) or, occasionally, to non-governmental organisations, for further assistance. The Permanent Bureau also refers individuals to publications, where relevant, such as the Guides to Good Practice under the 1980 Convention.

#### ***Miscellaneous other requests***

76. A few requests are also received from researchers seeking information about the Conventions. These individuals are referred to relevant information on the Hague Conference website and other Hague Conference documentation, as appropriate. Finally, a limited number of requests are received from the media. These are dealt with on a case-by-case basis and general information regarding the Conventions will be provided in an appropriate case.

#### ***Responding to requests: comments from States***

77. The Permanent Bureau currently keeps a record of all requests received and responses made in relation to the 1980 and 1996 Conventions. As stated above, the Permanent Bureau has found that the information received from such requests, in conjunction with information from other sources, can often assist in identifying problems with the implementation and operation of the Conventions in Contracting States, highlighting areas that might benefit from consideration at Special Commission meetings or further work by the Hague Conference. The information may also identify non-Contracting States where difficulties are occurring more regularly. This information is useful since it can help to identify (1) those areas where training on the practical operation of the Conventions may be required and (2) those non-Contracting States where promotional and educational activities may be useful.

78. In Questionnaire I, States were asked for their views on the role of the Permanent Bureau in responding to requests received from individuals.<sup>143</sup> The vast majority of the replies<sup>144</sup> supported the work by the Permanent Bureau responding to individuals, including referral(s) and offering information of a general nature on the Conventions.

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<sup>143</sup> Prel. Doc. No 1 (*op. cit.* note 2), at question 22.1 (g).

<sup>144</sup> Of 21 substantive responses to question 22.1 (g), 20 States responded positively to this service.

Many States indicated that they found such a service useful<sup>145</sup> and several States commented that the service contributed to the effective operation of the Conventions.<sup>146</sup>

79. Although the Permanent Bureau's work in responding to individual requests appears highly valued, it does entail a significant allocation of resources. It should be noted that some Contracting States<sup>147</sup> have suggested an even more active role for the Permanent Bureau in the future in relation to individual cases where there are difficulties between Contracting States and allegations of non-compliance with the 1980 Convention. This issue is discussed in more detail in the Section IV and it is hoped that this will be discussed at the 2012 Special Commission (Part II).

### ***Requests for technical assistance***

80. In addition to providing information and facilitating co-operation among States, the Permanent Bureau, through the International Centre for Judicial Studies and Technical Assistance, also responds to States' requests for technical assistance, *i.e.*, it provides targeted training, consultations, fact-finding missions, and expertise regarding the proper operation and implementation of the Hague Conventions. More detailed information regarding technical assistance provided can be found in the Background Note to the Working Group for Technical Assistance (2011).<sup>148</sup>

## **III. THE DEVELOPMENT OF REGIONAL PROGRAMMES AND THE MALTA PROCESS**

### **A. Regional programmes and services through regional offices**

#### ***The regional programme and the Latin American Regional Office***

81. Activities on a regional level encourage co-operation and co-ordination among States with special cultural, geographic and linguistic ties. In turn, this facilitates more effective implementation of the Hague Conventions in the particular legal environments shared by States in a region. Beginning in 2005, the Hague Conference embarked on a Special Programme for Latin American States.<sup>149</sup> The expansion of this programme over the past six years has been made possible by the support and co-ordination of the Permanent Bureau's Latin American Office led by the Liaison Legal Officer for Latin America. In addition, the Special Programme for Latin America and the Regional Office have benefitted from the work of the part-time Legal Assistant who has been working for the Regional Office since 2009. In 2010, the Latin American Office was bolstered by two significant developments. In the context of implementing the strategic aim of the Hague Conference of reinforcing its co-operation with, and its presence in the region, on 7 May 2010, the Secretary General signed an agreement concerning co-operation with MERCOSUR. The agreement was co-signed by the Ministers of Justice of the Members of MERCOSUR (Argentina, Brazil, Paraguay and Uruguay), as well as those of its Associate States (Bolivia, Chile, Ecuador and Peru). The agreement entered into force immediately. An agreement concerning the Latin American Office was also concluded with the

<sup>145</sup> *E.g.*, Argentina, Canada, China (Hong Kong SAR and Macao SAR), Colombia, Croatia, Cyprus, Czech Republic, Estonia, Finland, Israel, Luxembourg, Norway, Panama, Portugal, Romania, Slovakia, United Kingdom (England and Wales).

<sup>146</sup> *E.g.*, Argentina, China (Hong Kong SAR and Macao SAR), Israel, Panama, United Kingdom (England and Wales).

<sup>147</sup> *E.g.*, see Norway's response to Prel. Doc. No 1 (*op. cit.* note 2), at question 23 and see Section IV below.

<sup>148</sup> *Op. cit.* note 70.

<sup>149</sup> States which continue to be involved in the Special Programme include Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela, as well as Canada, Spain and the United States of America.

Government of Argentina. This agreement broadens the support provided by the Argentine Government to the Office.

82. The Latin American Regional Office continues to provide essential support to activities in the region in relation to the work of the Hague Conference, including the 1980 and 1996 Conventions. The Office provides services including: responding to requests from officials, judges, practitioners and academics in the region; communicating with National Organs and Central Authorities to encourage greater participation in Hague Conference activities (such as the completion of Hague questionnaires, preparation for attendance and co-ordination at Special Commission meetings); participating in, and providing logistical and organisational support with conferences, seminars and trainings in the region, including those which promote the 1980 and 1996 Conventions and educate Convention actors regarding their practical operation; and providing assistance concerning the implementation and operation of the Conventions. In relation to training, the Liaison Legal Officer has assisted with and presented at numerous judicial and interdisciplinary seminars on international child abduction and protection. Meetings held by the Liaison Legal Officer with Supreme Courts in the region have facilitated the exponential growth of the Hague Network which now covers all 17 Latin American States Parties to the 1980 Convention.

83. In addition, a Co-operation Agreement signed with the Inter-American Children's Institute (IIN) in June 2006 has led to fruitful co-operation and tangible results in the region during the past five and a half years. In particular, three Inter-American meetings of Central Authorities and expert judges were organised to discuss the operation of the 1980 Convention and to promote the 1996 Convention in the region. A "Model Law on Procedure for the Application of the Conventions on International Child Abduction" was also developed in 2007, which has inspired law reform in several States. A preliminary study on the impact of the 1996 Convention in the Americas, generated by a working group, has been used by several States in the region to assist with their "impact assessment" concerning implementation of the 1996 Convention.

84. In the Conclusions and Recommendations of the 2006 Special Commission, the following view was expressed regarding the regional activities of the Hague Conference, including the Latin American Office: "The Special Commission welcomes the advances made by the Permanent Bureau in further expanding the influence and understanding of the Hague Conventions through the Latin American Programme, the Africa Project and developments in the Asia Pacific Region."<sup>150</sup> The Inter-American Meeting of International Hague Network Judges and Central Authorities on International Child Abduction, held in Mexico City, 23-25 February 2011, also expressed, in relation to the Hague Conference's regional work: "Full support and recognition were expressed for the Liaison Legal Officer for Latin America established in 2005 and for the recent addition of a part-time assistant to the Liaison Legal Officer."<sup>151</sup>

***Regional activities in the Asia Pacific region: the possibility of a new Asia Pacific Regional Office***

85. Given the success of the Hague Conference Latin American Office, increased efforts were made beginning in 2009 to open a regional office in the Asia Pacific region. A new Asia Pacific Regional Office would reinforce and strengthen the presence of the Hague Conference at the regional level and promote the Hague Conventions, including the 1980

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<sup>150</sup> *Op. cit.* note 16, para 1.9.1.

<sup>151</sup> Conclusions and Recommendations of the Inter-American Meeting of International Hague Network Judges and Central Authorities on International Child Abduction, held in Mexico City, 23-25 February 2011, at para. 16.

and 1996 Conventions; provide technical assistance to the Asia Pacific region with respect to analysis and implementation of Hague Conventions; offer assistance to Asia Pacific States with regard to trainings and seminars for judges, government officials, Central Authority officers and other professionals with responsibility for implementing Hague Conventions; facilitate engagement and networking with regional actors - including National Organs, Central Authorities, Hague Network Judges, international organisations and the academic sector; and encourage co-operation of Central Authorities as a way to strengthen the operation of the Hague Conventions. It would also support participation of Asia Pacific States in the work of the Hague Conference, encouraging them to join the organisation and accede to or ratify its Conventions.

86. Following the success of three regional conferences in the Asia Pacific region on the work of the Hague Conference, including its work on international child protection (Malaysia, 2005; Australia, 2007; Hong Kong, 2008), a formal consultation process commenced in 2009 with Member States in the region concerning the possibilities for the establishment of a regional presence for the Hague Conference in the Hong Kong Special Administrative Region. During the 2010 session of the Council on General Affairs and Policy, an informal meeting of experts from the Asia Pacific region was organised to discuss the offer made by Hong Kong to host such a regional office. This consultation process continued in 2011, in particular during the Fourth Asia Pacific Conference, which took place in Manila from 26 to 28 October 2011. This Conference recognised, "the need for and value of the proposed establishment of an Asia Pacific Regional Office of the Hague Conference in Hong Kong, China".<sup>152</sup> It noted, "the overwhelmingly positive responses by Member States in the Region to the questionnaire jointly prepared by Australia, China and the Philippines issued on 04 August 2011 relating to the Proposal"<sup>153</sup> and therefore "agreed to support the Proposal as an excellent measure to strengthen the presence of the Hague Conference in the Region and encouraged the early establishment of the Regional Office as soon as practicable in the next year".<sup>154</sup> Hong Kong has offered to make office space available and it is hoped that other States in the region will come forward with financial or in-kind support, including possible legal officers.

87. If a regional office is established in the Hong Kong Special Administrative Region, it is hoped that, like in Latin America, the presence of a Regional Office will assist with the promotion and operation of the Hague Conventions, including the 1980 and 1996 Conventions, in the region.

## **B. The Malta Process**

### ***The Malta Process: a brief background***

88. The "Malta Process" is a dialogue between senior judges and high ranking government officials from Contracting States to the 1980 and 1996 Conventions and non-Contracting States with Shariah based law. The Process is aimed at improving State co-operation in order to assist with resolving difficult cross-border family law disputes in situations where the relevant international legal framework is not applicable. In particular, the Process aims to improve child protection between the relevant States by: (1) ensuring that the child's right to have continuing contact with both parents (even though they live in different States) is supported; and (2) combating international child abduction.

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<sup>152</sup> Page 6 of the Conclusions and Recommendations of the Fourth Asia Pacific Conference of the Hague Conference on Private International Law, held from 26 to 28 October 2011 in Manila, Philippines.

<sup>153</sup> *Ibid.*

<sup>154</sup> *Ibid.*

89. The Malta Process commenced as a result of research undertaken in preparation for the 2002 Special Commission.<sup>155</sup> This research considered a number of particular issues which arise in relation to international child abduction and cross-frontier access where one of the States concerned has Shariah based law. The idea was "to explore the potential for further co-operation in these cases, the relevance of current international instruments, in particular the 1980 and 1996 Conventions, and the possibilities for further developments at the international level".<sup>156</sup> The research paper analysed 11 bilateral arrangements between States with Shariah based law and certain "Hague States".<sup>157</sup> It acknowledged that these bilateral efforts were "an elementary and useful legal framework serving on the one hand as a channel of information and communication between authorities, and on the other hand in some situations rendering possible – and this is the essential element – the return of the child and the arrangements for access across international borders".<sup>158</sup> At the same time, the research paper pointed to a number of problems in the operation of these bilateral arrangements with regard to international child abduction cases and concluded that it was necessary to develop and extend multilateral co-operation in parallel to the bilateral co-operation and encourage further dialogue between these States so as to protect as far as possible the interests and development of children who have their roots in two different cultures.<sup>159</sup> Discussions at the 2002 Special Commission concluded with the following recommendation:

"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."<sup>160</sup>

90. From 14 to 17 March 2004, a Judicial Conference on Cross-Frontier Family Law Issues involving certain "Hague Convention" and "Non-Hague Convention" States with Sharia based law was convened in St. Julian's, Malta. This was the first in a series of, so far, three so-called "Malta Conferences" bringing together top ranking judges and government officials, as well as officials of regional organisations, non-governmental organisations and academics.<sup>161</sup>

91. At the centre of the first Malta Conference was the search for common legal principles to begin to identify the basic building blocks for better co-operation and for the

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<sup>155</sup> See "Child Abduction and Transfrontier Access: Bilateral Conventions and Islamic States: A Research Paper", drawn up by Caroline Gosselain for the Permanent Bureau, Prel. Doc. No 7 of August 2002 for the attention of the 2002 Special Commission (available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention" and "Preliminary Documents").

<sup>156</sup> See the Introduction to Prel. Doc. No 7 of August 2002 (*ibid.*).

<sup>157</sup> *Ibid.*

<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*

<sup>160</sup> Conclusions and Recommendations of the 2002 Special Commission (*op. cit.* note 12), at Annex I, para. 3. In addition, it should be noted that in its meeting of April 2003 the Council on General Affairs and Policy noted that, regarding child protection, "work was continuing [...] in relation to Islamic States". See the Conclusions of the Special Commission held from 1–3 April 2003 on General Affairs and Policy of the Conference (available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Work in Progress" then "General Affairs").

<sup>161</sup> Participating in the First Malta Conference were judges and experts from Algeria, Belgium, Egypt, France, Germany, Italy, Lebanon, Malta, Morocco, the Netherlands, Spain, Sweden, Tunisia, the United Kingdom, the European Commission, the Council of the European Union, the International Social Service and Reunite.

development of a "rule of law" between the States concerned.<sup>162</sup> This involved: "(1) a full appreciation of how the legal systems concerned currently address cross-frontier family law problems; (2) a process in which principles develop on the basis of consensus – principles in which all the countries concerned feel a sense of "ownership"; (3) respect for the diversity of the different legal systems and their basic values; and (4) a willingness to compromise in the pursuit of shared objectives which, in the case of international child protection, include those embodied in the UNCRC".<sup>163</sup> At the conclusion of the meeting, those present agreed upon the "Malta Declaration".<sup>164</sup> This Declaration has been said to contain principles which:

"are much more than statements of aspiration. They contain possible building blocks for the development of a legal framework – a "rule of law". Particularly important is the recognition of the need to develop common jurisdictional standards and to give mutual respect to decisions made on those bases."<sup>165</sup>

92. Building on the success of the first Malta Conference, the second Malta Conference took place from 19 to 22 March 2006 and involved an additional five States.<sup>166</sup> At the conclusion of this second meeting a further Declaration was agreed upon including a statement (at para. 11) that, "[t]he process of dialogue, now known as the "Malta Process", should continue, with the assistance of the Hague Conference and in co-operation with other international organisations including the European Union".<sup>167</sup>

93. Following this conference, the 2006 Special Commission concluded: "Strong support is expressed for the effort being undertaken by the Hague Conference, through the Malta Process, to develop improved legal structures for the resolution of cross-frontier family disputes as between certain Hague Convention States and certain non-Hague Convention States".<sup>168</sup>

94. The third Malta Judicial Conference on Cross-Frontier Family Law Issues took place from 23 to 26 March 2009 with judges and experts from 24 States attending, as well as experts from several international and regional organisations.<sup>169</sup> The Conference continued the dialogue of the previous conferences and, in particular, explored issues such as:

- the development and improvement of inter-State administrative and judicial co-operation both regionally and globally;

<sup>162</sup> See Volume VIII of *The Judges' Newsletter* and the contribution of the then Deputy Secretary General, W. Duncan.

<sup>163</sup> The *United Nations Convention on the Rights of the Child*. See, *ibid.*, at p. 7.

<sup>164</sup> See the Declaration of the Malta Judicial Conference on Cross-Frontier Family Law Issues, hosted by the Government of Malta in collaboration with the Hague Conference on Private International Law, St. Julian's, Malta (14-17 March 2004), available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children" and "The "Malta Process".

<sup>165</sup> *Op. cit.* note 162, at p. 7.

<sup>166</sup> Australia, Canada, Indonesia, Italy, Libya, Malaysia and Turkey participated for the first time (original participants Italy and Spain were unable to attend).

<sup>167</sup> The Declaration of the Second Judicial Conference on Cross-Frontier Family Law Issues, St. Julian's, Malta (19-22 March 2006), available on the Hague Conference website, *ibid.*

<sup>168</sup> Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 16), at para. 1.9.2.

<sup>169</sup> Participating were judges and experts from Australia, Bangladesh, Belgium, Canada, Egypt, France, Germany, India, Israel, Jordan, Malaysia, Malta, Morocco, the Netherlands, Oman, Pakistan, Qatar, Spain, Sweden, Switzerland, Tunisia, Turkey, the United Kingdom, the United States of America, the European Commission, the European Parliament, the Council of the European Union, the United Nations Committee on the Rights of the Child, the League of Arab States, International Social Service, the International Centre for Missing and Exploited Children, and Reunite.

- measures to prevent abduction or abuse of visiting rights and promote parental co-operation and agreement;
- the practical arrangements needed to facilitate transfrontier visits;
- cross-border mediation in family matters;
- exchange of information concerning the laws and practices of the different legal systems;
- cross-border recovery of child support (maintenance).

95. In addition, the Conference continued to identify and elaborate the building blocks for the development of a legal structure that would provide a firm basis for judicial co-operation and provide parents with a secure international framework within which to resolve their differences. This included consideration of the relevant Hague Conventions, in particular the 1996 Convention, as well as bilateral and regional initiatives. In the Third Malta Declaration, the participants recommended, "that States give careful consideration to the ratification of, or accession to" the 1996 Convention and stated that the 1980 Convention "merits similar close attention".<sup>170</sup> The participants further recommended the development of effective structures for the mediation of cross-border family disputes which involve, on the one hand, a State Party to a relevant Hague Convention and, on the other hand, a non-State Party (as to which, see further paras 97 *et seq.*).<sup>171</sup>

96. In addition to the three Malta Conferences, there have been other initiatives undertaken by the Hague Conference as part of the Malta Process. In 2009 and 2010, members of the Permanent Bureau participated as speakers in several seminars of the Euromed Justice II Programme in Lisbon, Ljubljana, Athens, Brussels and The Hague. The Permanent Bureau also hosted, in co-operation with the European Commission, a Euromed study visit of senior judges and State officials from Algeria, Israel, Jordan, Lebanon, Morocco, Tunisia and the Palestinian Authority. In December 2010, the Morocco Judicial Seminar on Cross-Border Protection of Children and Families was hosted by the Supreme Court of the Kingdom of Morocco – Morocco having joined the 1980 Convention in July 2010, following its ratification of the 1996 Convention in December 2002 - with the Hague Conference on Private International Law and TAIEX in Rabat, Morocco. These initiatives were aimed at improving co-operation between Hague and non-Hague States in the Mediterranean region and promoting accession to the 1980 and 1996 Conventions.<sup>172</sup>

### ***The Working Party on Mediation in the context of the Malta Process***

97. While the Malta Process continues to be aimed towards putting in place an international legal framework between the Hague and non-Hague States to assist in solving cross-border family disputes, the Third Malta Conference acknowledged the urgent need to give individuals involved in cases to which no international legal framework applies some assistance, in the interim, by encouraging the development of mediation structures. Following a proposal by Canada, the participants at the Conference therefore recommended the establishment of "a Working Party to draw up a plan of

<sup>170</sup> The Declaration of the Third Judicial Conference on Cross-Frontier Family Law Issues, St. Julian's, Malta (23-26 March 2009), available on the Hague Conference website (see *supra* note 164).

<sup>171</sup> See paras 97-104, *infra*, concerning the Working Party on Mediation in the context of the Malta Process.

<sup>172</sup> In addition, it may be of interest to note that, from 20 to 22 June 2011, the First Gulf Judicial Seminar on Cross-Frontier Legal Co-operation in Civil and Commercial Matters was held in Doha, Qatar. The Conclusions and Recommendations of this Seminar are available at on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "News & Events" then "2011".



action for the development of mediation services to assist where appropriate in the resolution of cross-frontier disputes concerning custody of and contact with children".<sup>173</sup>

98. The 2009 Council on General Affairs and Policy of the Hague Conference expressed support for this recommendation and authorised, in the context of the Malta Process, the establishment of a "Working Party to promote the development of mediation structures to help resolve cross-border disputes concerning custody of or contact with children".<sup>174</sup> Following this mandate, the Permanent Bureau began co-ordination talks with Canada, which had agreed to take a leading role. Based on demographic factors and legal traditions, a small group of States was invited to designate an expert to the Working Party. These States consisted of an equal number<sup>175</sup> of Contracting States to the 1980 Convention and non-Contracting States, namely Egypt, France, Germany, India, Jordan, Malaysia, Morocco, Pakistan, the United Kingdom and the United States of America. In addition, a small number of independent mediation experts were invited to join the Working Party.

99. The Working Party,<sup>176</sup> co-chaired by Ms Lillian Thomsen (Canada) and Mr Justice Jillani (Pakistan), worked initially via conference calls and e-mail exchanges. Two questionnaires, one on existing mediation services and the other on the enforceability of mediated agreements, were circulated in preparation for the Working Party conference calls.<sup>177</sup> The Working Party identified the need for the establishment of an entry point in each State in order to assist individuals with information on available mediation services and related issues. Following a decision of the Working Party in October 2009, principles on mediation structures were drawn up and discussed, including at an in-person meeting in May 2010 in Ottawa, Canada.

100. In November 2010, the *Principles for the Establishment of Mediation Structures in the context of the Malta Process* were finalised together with the *Explanatory Memorandum*.<sup>178</sup> In December 2010 these documents were circulated to the Members of the Hague Conference and to the attendees of the Malta Conferences, all of whom had been regularly updated on the progress made by the Working Party. The Principles call for the establishment of a Central Contact Point for international family mediation in each State. This Central Contact Point is intended to facilitate the provision of information on: available mediation services in the respective jurisdictions, access to mediation, and information regarding other important related issues, such as relevant legal information. The Principles further refer to certain standards regarding the identification of

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<sup>173</sup> The Declaration of the Third Judicial Conference on Cross-Frontier Family Law Issues, St. Julian's, March 2009 (*supra* note 170), at para. 7.

<sup>174</sup> See the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Work in Progress" then "General Affairs" for the Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (31 March – 2 April 2009): "In the context of the Malta Process, and subject to the availability of the necessary resources, the Council authorised the establishment of a Working Party to promote the development of mediation structures to help resolve cross-border disputes concerning custody of or contact with children. The Working Party would comprise experts from a number of States involved in the Malta Process, including both States Parties to the 1980 Child Abduction Convention and non-States Parties. It would also include independent experts. The Permanent Bureau will keep Members informed on progress."

<sup>175</sup> Morocco, not Party to the 1980 Convention when the Working Party was established, later joined the 1980 Convention.

<sup>176</sup> The Working Party meetings would not have been possible without the generous financial and in-kind support provided by Canada and Australia.

<sup>177</sup> Responses to which are available on the Hague Conference website in the specialised Child Abduction Section.

<sup>178</sup> The Principles and Explanatory Memorandum are available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Cross-border family mediation".

international mediation services by the Central Contact Points as well as certain standards regarding the mediation process and the mediated agreement. The Principles emphasise the importance of rendering a mediated agreement binding or enforceable in all the legal systems concerned before its implementation. Some of the participating States<sup>179</sup> have already taken measures to implement the Principles in their jurisdictions and have designated, or are in the process of designating, Central Contact Points.

101. The Explanatory Memorandum drawn up by the Working Party emphasises the fact that implementation of the Principles will not only be of benefit in non-Hague cases but also in Hague cases.<sup>180</sup> Individuals involved in an abduction case falling within the scope of the 1980 Convention will profit from information provided by Central Contact Points on available mediation services and on how to render a mediated agreement binding in the relevant jurisdiction.<sup>181</sup> This also means that once a State which is currently not Party to the 1980 Convention joins the Convention, its Central Contact Point for international family mediation will not lose its relevance.

102. In 2011, the Council on General Affairs and Policy requested the Working Party "to continue work on the implementation of mediation structures in the context of the Malta Process and, in particular, with the support of the Permanent Bureau, and in light of discussions to take place at the Sixth Meeting of the Special Commission:

- to facilitate wider acceptance and implementation of the Principles as a basic framework for progress;
- to consider further elaboration of the Principles; and,
- to report to the Council in 2012 on progress".<sup>182</sup>

103. In Questionnaire I, States were asked for their comments on the *Principles for the Establishment of Mediation Structures in the context of the Malta Process* and questioned as to whether steps had been taken towards the implementation of the Principles in their State.<sup>183</sup> The States that responded to this question generally recognised the importance of the Principles and offered support for them.<sup>184</sup> At the 2011 Special Commission (Part I),<sup>185</sup> the co-chairs of the Working Party presented the work of the group and introduced the Principles. They also highlighted the significance of the Malta Process. The Principles were welcomed by the States participating in the 2011 Special Commission (Part I). It was noted that the Principles assisted families in reaching amicable solutions in the context of cross-border family disputes involving non-Contacting States.

104. The 2011 Special Commission (Part I) also recognised that, in relation to the future of the Working Party, the development of the Principles and the establishment of the Central Contact Points in accordance with the Principles were only the first steps in

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<sup>179</sup> The Permanent Bureau has been informed that Australia, Canada, France and Pakistan have already designated or are in the process of designating Central Contact Points.

<sup>180</sup> See Explanatory Memorandum: "It has to be noted that the establishment of structures for cross-border family mediation will be equally relevant for cross border family disputes falling within the scope of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention. Both Conventions promote the amicable resolution of the family conflict through mediation or similar means. The Principles may therefore also be useful in supplementing the international legal framework established by the Conventions."

<sup>181</sup> Where such services are not already provided by the Central Authority under the 1980 Convention: in this regard, note Art. 7(2) c) of the 1980 Convention.

<sup>182</sup> See the Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (5-7 April 2011), at para. 8 (available at < www.hcch.net > under "Work in Progress" then "General Affairs"). See the Conclusions and Recommendations of the 2011 Special Commission (Part I) (*op. cit.* note 5), at paras 60-62.

<sup>183</sup> See question 20.6 (a) of Prel. Doc. No 1 (*op. cit.* note 2).

<sup>184</sup> *E.g.*, Australia, Bulgaria, Canada, Germany, Hungary, the Netherlands, Spain, United States of America.

<sup>185</sup> See Minutes No 15 of the 2011 Special Commission (Part I).

improving the situation for those involved in non-Hague cross-border family disputes concerning custody and contact. The implementation of the Principles was seen as important for creating an international network for co-operation in this area. More importantly, the Principles encourage non-Contracting States to commit to providing services to assist parties in these difficult disputes at a governmental level. Reference was made to the 2011 Council mandate (see para. 102 *supra*). In the Conclusions and Recommendations, the Special Commission encouraged States “to consider the establishment of such a Central Contact Point or the designation of their Central Authority as a Central Contact Point”.<sup>186</sup> This recommendation was based on the understanding that, while the Working Party would continue to be restricted in its constitution to a limited number of States, the Principles were open for adoption by any State whether or not participating in the Working Party. The recommendation further reflects the suggestion that Contracting States to the 1980 Convention may wish to consider designating their Central Authority as the Central Contact Point for their jurisdiction, undertaking the additional Central Contact Point functions.

### **The Future of the Malta Process**

105. One of the questions to be discussed at the 2012 Special Commission (Part II) is the future of the Malta Process (see Info. Doc. No 1<sup>187</sup> and the draft agenda for Part II). In preparation for this discussion States were asked in Questionnaire I to comment on the Malta Process to date and to provide their thoughts for the future.<sup>188</sup> The responses to these questions were somewhat limited in number (13 substantive responses to question 20.6 *b*) and 17 substantive responses to question 20.6 *c*). However, many of the States that did provide substantive comments emphasised the importance of the Process.<sup>189</sup> In relation to the future of the project as a whole, several States expressed interest in taking the Malta Process forward.<sup>190</sup>

106. Specific suggestions concerning the future of the Malta Process included a proposal that the focus of the Malta Process should now be on producing quantifiable improvements in the way cases between Hague and non-Hague States are resolved.<sup>191</sup> One State suggested that the formation of the Working Party on mediation could be used as a model in terms of accomplishing concrete action in the Malta Process. The large group involved in the Malta Process could break into smaller Working Groups which would be focused on addressing particular, achievable goals. The Permanent Bureau could share the progress and the end results of these working groups with the wider group and monitor implementation.

107. A number of States expressed the opinion that it would be useful if, where it was demonstrated that the 1980 and 1996 Conventions could not be ratified / acceded to in the near future by certain non-Hague States, the Malta Process could lead to the development of a formal structure for use between such States and Hague States. In this

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<sup>186</sup> See the Conclusions and Recommendations of the 2011 Special Commission (Part I) (*op. cit.* note 5), at para 61.

<sup>187</sup> Info. Doc. No 1 of November 2010, “Preparations for the Sixth Meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions”, available on the Hague Conference website at < www.hcch.net > under “Child Abduction Section” then “Special Commission meetings on the practical operation of the Convention” and “Preliminary Documents / Information Documents” (under 6th Special Commission meeting, Part I, June 2011).

<sup>188</sup> See questions 20.6 (b) and (c) of Prel. Doc. No 1 (*op. cit.* note 2).

<sup>189</sup> *E.g.*, Canada, Estonia, France, Germany, Israel, Spain, Switzerland, Ukraine, United Kingdom (comment of England and Wales judiciary 1), United States of America.

<sup>190</sup> *E.g.*, Austria, Belgium, Canada (though stressing the need for this to be discussed at the Council on General Affairs and Policy in light of the Hague Conference’s mandate and priorities), France, Germany, Israel, Mauritius, Portugal, Slovakia, Spain, United States of America.

<sup>191</sup> United States of America (response to questions 20.6 (b) and (c)).

regard: (a) one State commented that, if the Conventions were not able to be ratified by certain non-Hague States, alternative structures should be found to provide a platform for States to co-operate (*e.g.*, contact persons should be identified in those States, a Country Profile type document could be developed and filled in explaining in what circumstances a child could be returned from that State, etc.);<sup>192</sup> (b) another State suggested developing systems of co-operation which could work in parallel to the 1980 and 1996 Conventions;<sup>193</sup> (c) finally, one State suggested the possibility of drawing up an instrument for mutual legal respect between such States, based upon Articles 9 to 11 of the UNCRC.<sup>194</sup>

108. It appears, therefore, that there is general support for taking the Malta Process forward in order to build upon past work and to achieve further tangible results. In this context, there is a desire among a number of States to explore whether the "building blocks" which are already in place to develop a "rule of law" between these States can be further built upon. States may wish to discuss at the 2012 Special Commission (Part II) what can be done to further reinforce the Malta Process. Whatever the outcome of discussions, it is hoped that States will support a Fourth Malta Conference, possibly in late 2012 or early 2013, to continue this important dialogue.

#### **IV. PROPOSALS BY STATES FOR THE FUTURE**

109. In Questionnaire I, States were asked for their views regarding what other measures and mechanisms they would recommend: (a) to improve the monitoring and operation of the Conventions, (b) to assist Contracting States in meeting their Convention obligations and (c) to evaluate whether serious violations of the Conventions have occurred.<sup>195</sup>

110. In relation to improving the operation of the Conventions, various suggestions were put forward. One State responded that the Special Commission meetings should remain the principal multilateral mechanism to review and improve the operation of the Conventions.<sup>196</sup> However, in addition, it was suggested that consideration be given to setting up information sessions or group discussions to reinforce the Guides to Good Practice. These sessions or group discussions could be held in the margins of the Special Commission or between Special Commission meetings (by way of video-conference). Another State recommended that Special Commission meetings should take place more often, for example every three years.<sup>197</sup> Another view was that while Central Authorities under both Conventions need more regular opportunities to meet and discuss specific problems, Special Commission meetings are often too formal for Central Authorities who are concerned with their day-to-day difficulties.<sup>198</sup> Support was expressed for regional or

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<sup>192</sup> Slovakia.

<sup>193</sup> Belgium.

<sup>194</sup> Israel.

<sup>195</sup> Prel. Doc. No 1 (*op. cit.* note 2) at questions 22.2 (a)-(c). In this regard, reference may also be made to responses to the "Questionnaire on the desirability and feasibility of a protocol to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction", drawn up by the Permanent Bureau, Prel. Doc. No 2 of December 2010 for the attention of the Special Commission of June 2011, available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Work in Progress" then "Child Abduction" ("Questionnaire II"), where, at question 11, views were invited on the possibility of including in any protocol to the 1980 Convention provisions related to "reviewing ... the operation of the [1980] Convention". A summary of responses to question 11 can be found in the Annex to the "Guide to Part II of the Sixth Meeting of the Special Commission and consideration of the desirability and feasibility of further work in connection with the 1980 and 1996 Conventions", drawn up by the Permanent Bureau, Prel. Doc. No 13 for the attention of the Special Commission of January 2012, available on the Hague Conference website *ibid.*

<sup>196</sup> Canada.

<sup>197</sup> Israel.

<sup>198</sup> Slovakia.

otherwise targeted meetings to discuss operational or co-ordination issues among Central Authorities.<sup>199</sup>

111. In terms of assisting Contracting States with meeting their Convention obligations, a number of responses mentioned that there should be more training for Central Authority staff and other Convention actors.<sup>200</sup> Some States commented again that more small-scale networking opportunities should be established to discuss issues, share information and problem-solve and stated that this could operate on a regional basis.<sup>201</sup> One State suggested that positions similar to the Liaison Legal Officer for Latin America should be established for other regions.<sup>202</sup> In terms of the role of the Permanent Bureau in this regard, two States responded that they felt that the Permanent Bureau already provides the necessary and needed support.<sup>203</sup> However, another commented that consideration should be given as to whether the Permanent Bureau should take a more active role in certain circumstances and, in particular, in individual cases. For example, where a Contracting State is experiencing particular difficulties with the application of the 1980 or 1996 Convention in another Contracting State, it might assist if a conference call could be conducted with the participation of the Permanent Bureau in an effort to try to resolve the issues or identify alternative solutions.<sup>204</sup>

112. Opinions varied concerning the question of what other measures or mechanisms could be used to evaluate whether serious violations of Convention obligations have occurred. One view was that the authorities of the Contracting States are best placed to evaluate whether serious violations of the Conventions have occurred, *i.e.*, if a Contracting State is not meeting its obligations, it is up to other Contracting States to raise the issue through their Central Authorities. If the problem is systemic, it is likely that a number of Contracting States will have encountered similar problems and it is up to Contracting States to work together with the other Contracting State to solve the problem.<sup>205</sup> However, other States took a different view stating that Contracting States should keep the Permanent Bureau informed of any alleged violation of the Conventions which has occurred.<sup>206</sup> It was considered that the Permanent Bureau should have a stronger role in terms of monitoring the Conventions, particularly in monitoring compliance with the Conventions.<sup>207</sup> Further, through monitoring the Conventions, the Permanent Bureau should determine which States are meeting their obligations and when violations of the Conventions are occurring.<sup>208</sup> One State recommended that periodic alerts be sent to Contracting States regarding those Contracting States which are not complying with the Conventions and recommendations be issued to those Contracting States to comply.<sup>209</sup> Another State suggested that a brief annual questionnaire regarding specific strengths and weaknesses in the application of the Conventions could be drafted and circulated.<sup>210</sup> Another proposed that:

“the Permanent Bureau can contact Member States where there has been evasion of the Convention, and that the Permanent Bureau can suggest that the State

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<sup>199</sup> United States of America.

<sup>200</sup> *E.g.*, Argentina, Panama. Slovakia suggested that the Hague Conference should organise training seminars (possibly in co-operation with the Hague Academy) on the Conventions for practitioners (attorneys, judges, clerks). These should provide basic information on the content, interpretation and practice of the Conventions to those interested.

<sup>201</sup> *E.g.*, Canada, China (Hong Kong SAR).

<sup>202</sup> United States of America, as to the efforts going on to establish other regional offices, see section III, *supra*.

<sup>203</sup> Romania, Slovakia.

<sup>204</sup> Israel.

<sup>205</sup> Canada.

<sup>206</sup> Argentina.

<sup>207</sup> *E.g.*, Argentina, the Netherlands, Norway.

<sup>208</sup> Panama.

<sup>209</sup> Portugal.

<sup>210</sup> Argentina.

initiates training, that they can assist with the training or recommend a visit to another State to see how they have implemented and practice the Convention.”<sup>211</sup>

113. Lastly, two States recommended specific mechanisms to determine non-compliance with the Conventions. One recommended that an independent office be set up, competent to review the practical operation of the Conventions and to deal with reports of suspected serious violations.<sup>212</sup> Another recommended that an appeal court should be established in The Hague to hear cases that raise special issues. It could be comprised of experts from different countries with a rotating panel and its judgments would be binding on all Contracting States.<sup>213</sup>

114. One issue which therefore appeared in several forms in the responses regarding the future was the role the Permanent Bureau should play in monitoring compliance with the Conventions and addressing issues of non-compliance. This issue arose (1) in a general form, and (2) in the context of individual cases. The role of the Permanent Bureau in assisting Contracting States with such issues not only has significant resource implications but also concerns questions of mutual trust among Contracting States. It is a question which therefore warrants further discussion at the 2012 Special Commission (Part II).

## V. CONCLUSION

115. The scope and number of services and strategies provided by the Hague Conference, often through its Permanent Bureau, to monitor and support the implementation and operation of the 1980 and 1996 Conventions has grown enormously over the past decades. This reflects, in part, the significant increase in the number of Contracting States to these Conventions, which includes developing States and States with economies in transition, as well as States less experienced with Conventions involving administrative and judicial co-operation. The growth in services also reflects the many needs identified at the successive Special Commission meetings.

116. The growth in services provided by the Permanent Bureau in relation to these Conventions, however, has not been matched by a similar growth in resources at the Permanent Bureau. As an example, the services described in this paper are currently undertaken by, at most, 1.5 principal lawyers and 4 legal officers (though, on occasion, fewer).<sup>214</sup>

117. In light of the limited resources available, the Permanent Bureau would be grateful to receive views on priorities for the next four to five years. What are the services considered crucial in relation to these Conventions? How can these services be yet more effectively delivered? In addition, two areas have been identified *infra* where particular direction is sought: that is, (a) what role should the Permanent Bureau play in monitoring and ensuring compliance with the 1980 Convention (and, in the future, the 1996 Convention), both generally and in relation to specific cases; and (b) what are the appropriate next steps for the Malta Process.

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<sup>211</sup> *Op. cit.* note 147.

<sup>212</sup> China (Hong Kong SAR). This issue also arose in the replies to Questionnaire II (*op. cit.* note 195) where, in response to question 11.3, views were expressed on the possibility of including in any protocol to the 1980 Convention provisions concerning the establishment of a body competent to review compliance with the 1980 Convention. Responses to Question 11.3 of Questionnaire II are summarised in the Annex to Prel. Doc. No 13 (*op. cit.* note 195).

<sup>213</sup> Israel.

<sup>214</sup> Full-time equivalents (FTEs). However, other principal lawyers may attend meetings, conferences or training in relation to the 1980 and 1996 Conventions if required.

118. The drafters of the 1980 and 1996 Conventions sought to put in place a legal framework “to improve the protection of children in international situations”.<sup>215</sup> This international legal framework can only fully achieve its aims if these Conventions are: (1) widely ratified; (2) properly implemented; (3) effectively operated; and (4) consistently applied. The Hague Conference on Private International Law, through its Permanent Bureau, remains committed to working with States to ensure that these ends are achieved.

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<sup>215</sup> Preamble to the 1996 Convention. The Preamble to the 1980 Convention states that the Convention is to “protect children internationally”.