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| <b>Title</b>              | <b>Draft Table of Conclusions and Recommendations of previous Meetings of the Special Commission (SC) on the practical operation of the 1980 Child Abduction and the 1996 Child Protection Conventions that are still relevant today</b>  |
| <b>Document</b>           | Prel. Doc. No 1 of October 2022   |
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| <b>Agenda Item</b>        | Item TBD  |
| <b>Mandate(s)</b>         | <a href="#">C&amp;D No 15. of CGAP 2022</a><br><a href="#">C&amp;D No 16. of CGAP 2021</a>  |
| <b>Objective</b>          | To seek comments from Members and Contracting Parties <b>by Friday 16 December 2022</b> on this draft updated version of Prel. Doc. No 6 of July 2017 in which 12 older C&Rs have been deleted (shown in track-changes) and 57 new C&Rs from 2017 have been added (highlighted in yellow). A new section shows the C&Rs that are common to both the 1980 and 1996 Conventions. Thank you for limiting any comments to deletions, additions and presentations matters. |
| <b>Action to be Taken</b> | For Decision <input type="checkbox"/><br>For Approval <input type="checkbox"/><br>For Discussion <input type="checkbox"/><br>For Action / Completion <input checked="" type="checkbox"/><br>For Information <input checked="" type="checkbox"/>   |
| <b>Annexes</b>            | N/A   |
| <b>Related Documents</b>  | <a href="#">Prel. Doc. No 6 of July 2017</a>  |

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## Draft Table of Conclusions and Recommendations of previous Meetings of the Special Commission (SC) on the practical operation of the 1980 Child Abduction and the 1996 Child Protection Conventions that are still relevant today

### I. 1980 Child Abduction Convention

#### 1. Implementation and interpretation<sup>1</sup>

|   | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|---|--|-------------------|-------------------|
| 1 | There was broad consensus that in general the Convention works well in the interests of children and meets the needs for which it was drafted.   | 1989              | I                 |
| 2 | Nonetheless, it was recognized that considerable further effort had to be made in order to promote fuller understanding of the Convention on the part of judges, lawyers and administrative authorities, as well as parents and other persons exercising responsibility for children.  | 1989              | II                |
| 3 | The Convention works well in practice and the States Parties are generally happy with its operation. Nonetheless, improvement can be made in a number of areas.  | 1993              | 1                 |
| 4 | The key concepts which determine the scope of the Convention are not dependent for their meaning on any single legal system. Thus the expression "rights of custody", for example, does not coincide with any particular concept of custody in a domestic law, but draws its meaning from the definitions, structure and purposes of the Convention.   | 1993              | 2                 |
| 5 | The national and regional legal frameworks, in which the Convention has to operate, are subject to sometimes significant changes. The same applies to technological means, which could potentially facilitate the operation of the Convention. It is therefore suggested that implementation, whether national or regional, should always be seen as a continuing process of development and improvement, even if the text of the Convention itself remains unchanged. | 2001              | 2.1               |
| 6 | The Convention should be interpreted having regard to its autonomous nature and in the light of its objects.   | 2001              | 4.1               |
| 7 | The Special Commission emphasises the continuing importance as an aid to the interpretation and understanding of the Convention of the Explanatory Report by Elisa Pérez-Vera.   | 2001              | 4.2               |

#### 2. Contracting States

|   | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|---|---|-------------------|-------------------|
| 8 | In order to assist newly-acceding States to implement the Convention effectively, and to provide relevant information to existing Contracting States in considering whether to accept | 2001              | 2.2               |

<sup>1</sup> The 2023 Special Commission (SC) meeting may wish to adopt a C&R updating the C&Rs appearing under items 1-3 of this section.

|    |   |      |     |
|----|---|------|-----|
|    | <p>accessions in accordance with Article 38 of the Convention, the Special Commission gives its approval to a questionnaire<sup>2</sup> to be addressed to newly acceding States, on the following understandings:</p> <p>a) that the Permanent Bureau would make the questionnaire available on the Hague Conference website and draw it to the attention of States which are known to be considering accession or which have recently acceded to the Convention;</p> <p>b) that it should be made clear that the provision of a response to the questionnaire is not compulsory but is recommended;</p> <p>c) that it would be for the State addressed to decide whether to communicate any response it makes through the Permanent Bureau to other Contracting States, or directly to such States as it may choose;</p> <p>that existing Contracting States which have already acceded to the Convention might also use this facility, if they so wish, as a possible means of expediting the process of acceptance in their case.</p> |      |     |
| 9  | Endeavours should continue to be made to encourage ratifications of, and accessions to, the 1980 Convention by States willing and able to undertake the Convention obligations. Contracting States are encouraged to arrange meetings at the regional level for this purpose.   | 2001 | 7.2 |
| 10 | [...] 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.  | 2011 | 1   |

### 3. Central Authorities – structure, powers

|    | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|---|-------------------|-------------------|
| 11 | Moreover, the Special Commission encourages States, whether contemplating becoming Parties to the Convention or already Parties, to organize their legal and procedural structures in such a way as to ensure the effective operation of the Convention and to give their Central Authorities adequate powers to play a dynamic role, as well as the qualified personnel and resources, including modern means of communication, needed in order expeditiously to handle requests for return of children or for access. | 1989              | IV                |
| 12 | The Central Authorities designated by the Contracting States play a key role in making the Convention function. They should be given a mandate which is sufficiently broad, and the qualified personnel and the resources, including modern means of communication, necessary to act dynamically and carry out their functions effectively. Central Authorities should have a regular staff, able to develop expertise in the operation of the Convention.  | 1993<br>2001      | 3<br>1.1          |
| 13 | Contracting States should inform the Permanent Bureau promptly of the contact details of their Central Authority(ies), and Central Authorities should inform the Permanent Bureau promptly of the   | 2001              | 1.2               |

<sup>2</sup> The Questionnaire for Newly Acceding States is available on the HCCH website at [www.hcch.net](http://www.hcch.net) under "Child Abduction" then "Questionnaires & Responses".

|    |   |      |   |
|----|---|------|---|
|    | names of contact persons, of the means by which they may be contacted and of their languages of communication. Central Authorities should promptly inform the Permanent Bureau of any changes in these details.   |      |   |
| 14 | Efforts should be made to ensure that Central Authorities act as a focal point for the provision of services or the carrying out of functions contemplated under Article 7 of the 1980 Convention. When the Central Authority does not itself provide a particular service or carry out a particular function, it should preferably itself engage the body which provides that service or carries out that function. Alternatively, the Central Authority should at least make available information regarding the body, including how to make contact with the body. | 2011 | 3 |
| 15 | Contracting States that have not already done so are asked to provide their Central Authorities with sufficient powers to request, where needed for the purpose of locating the child, information from other governmental agencies and authorities, including the police and, subject to law, to communicate such information to the requesting Central Authority.   | 2011 | 5 |

#### 4. Central Authorities – cooperation and communication

|    | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|--|-------------------|-------------------|
| 16 | Central Authorities should acknowledge receipt of an application immediately and endeavour to provide follow-up information rapidly. Central Authorities should reply promptly to communications from other Central Authorities.   | 2001              | 1.3               |
| 17 | Central Authorities should, as far as possible, use modern rapid means of communication in order to expedite proceedings, bearing in mind the requirements of confidentiality.   | 2001<br>2011      | 1.4<br>11         |
| 18 | Each Central Authority is encouraged, where this is feasible, to establish and regularly update a website, details of which should be furnished to the Permanent Bureau for the purpose of establishing a link with the Hague Conference website.  | 2001              | 1.7               |
| 19 | It is recommended that each Central Authority should publish, on its website if possible and/or by other means, such as a brochure or flyer (the precise format being a matter for the Central Authority), information concerning at least the following matters: <ul style="list-style-type: none"> <li>- the other Contracting States in relation to whom the Convention is in effect;</li> <li>- the means by which a missing child may be located;</li> <li>- the designation and contact details for the Central Authority;</li> <li>- application procedures (for return and access), documentary requirements, any standard forms employed and any language requirements;</li> <li>- details, where applicable, of how to apply for legal aid or otherwise for the provision of legal service;</li> <li>- the judicial procedures, including appeals procedures, which apply to return applications;</li> </ul> | 2001              | 1.8               |

|    |   |      |        |
|----|---|------|--------|
|    | <ul style="list-style-type: none"> <li>- enforcement options and procedures for return and access orders;</li> <li>- any special requirements which may arise in the course of the proceedings (e.g., with regard to matters of evidence);</li> <li>- information concerning the services applicable for the protection of a returning child (and accompanying parent, where relevant), and concerning applications for legal aid for, or the provision of legal services to, the accompanying parent on return;</li> <li>- information, if applicable, concerning liaison judges.</li> </ul> |      |        |
| 20 | Established Central Authorities are encouraged to explore ways of sharing their expertise and experiences with other Central Authorities when requested to do so.   | 2001 | 2.7    |
| 21 | Central Authorities should explore mechanisms for improving the flow of information to the Permanent Bureau (and vice-versa) with a view to identifying and solving potential problems and assisting the process of monitoring.   | 2001 | 2.8    |
| 22 | Central Authorities are encouraged, in addressing any practical problems concerning the proper functioning of the Convention, to engage in dialogue with one another. Where a group of Central Authorities share a common problem, consideration should be given to joint meetings which might in some cases be facilitated by the Hague Conference.  | 2001 | 2.9    |
| 23 | The Special Commission recognises the advantages and benefits to the operation of the Convention from information exchange, training and networking among Central Authorities. To this end, it encourages Contracting States to ensure that adequate levels of financial, human and material resources are, and continue to be, provided to Central Authorities.  | 2006 | 1.1.9  |
| 24 | 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.   | 2006 | 1.1.10 |
| 25 | The Special Commission draws attention to the serious consequences for the operation of the 1980 Convention of failure to inform the Permanent Bureau promptly of changes in the contact details of Central Authorities. In addition, the Permanent Bureau should undertake to remind Central Authorities of their duty in this respect once a year.  | 2011 | 6      |
| 26 | The Special Commission re-emphasises the need for close co-operation between Central Authorities in the processing of applications and the exchange of information under the 1980 Convention, and draws attention to the principles of “prompt responses” and “rapid communication” set out in the Guide to Good Practice under the 1980 Convention – Part I – Central Authority Practice.  | 2011 | 7      |
| 27 | The Special Commission welcomes the increasing co-operation within States between the member(s) of the International Hague Network of Judges and the relevant Central Authority resulting in the enhanced operation of the Convention.  | 2011 | 8      |
| 28 | The requested Central Authority should, as far as possible, keep the requesting Central Authority informed about the progress of  | 2011 | 16     |

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

## 5. Language and translation

|    | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|--|-------------------|-------------------|
| 29 | States are reminded of the terms of Article 24 and the possibility that a requesting State may send an application in either English or French when a translation into the official language or an official language of the requested State is not possible.   | 2001<br>2006      | 1.5<br>1.1.7      |
| 30 | As a matter of co-operation between Central Authorities, it would be desirable, in the circumstances foreseen by Article 24, for the requesting State to communicate with the requested State regarding any difficulties it has with the translation of the application. The Special Commission invites States to consider the possibility of agreeing arrangements for a translation of the application to be made in the requested State, while the cost is borne by the requesting State. | 2006              | 1.1.8             |

## 6. Applications for return

|    | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|--|-------------------|-------------------|
| 31 | The requesting Central Authority should ensure that each application is accompanied by a sufficient statement of the legal and factual basis on which the application rests, in particular concerning the matters of the habitual residence of the child, rights of custody and the exercise of those rights, as well as detailed information on location of the child. Central Authorities are reminded of the model form for the Request for Return recommended by the Fourteenth Session of the Hague Conference ( <i>Actes et documents (Proceedings)</i> , XIV <sup>ème</sup> Session, p. 423, and on the HCCH website at: <a href="https://www.hcch.net/en/publications-and-studies/details4/?pid=2778&amp;dtid=28">https://www.hcch.net/en/publications-and-studies/details4/?pid=2778&amp;dtid=28</a> ). | 2001              | 1.6               |
| 32 | The problem of legal concepts being mistranslated or misunderstood may be eased if the requesting Central Authority provides a summary of the relevant law concerning rights of custody. This summary would be in addition to a translation or copy of the relevant law.   | 2006              | 1.1.1             |
| 33 | In exercising their functions with regard to the <u>transmission or acceptance</u> of applications, Central Authorities should be aware of the fact that evaluation of certain factual and legal issues (for example, relating to habitual residence or the existence of custody rights) is a matter for the court or other authority deciding upon the return application.  | 2006              | 1.1.2             |
| 34 | The requesting Central Authority should ensure that the application is complete. In addition to the essential supporting documents, it is  | 2011              | 12                |



recommended that any other complementary information that may facilitate the assessment and resolution of the case accompany the application.

|    |   |      |       |
|----|---|------|-------|
| 35 | The Special Commission re-emphasises that –   | 2006 | 1.1.3 |
|    | (a) in exercising their functions with regard to the acceptance of applications, Central Authorities should respect the fact that evaluation of factual and legal issues (such as habitual residence, the existence of rights of custody, or allegations of domestic violence) is, in general, a matter for the court or other competent authority deciding upon the return application;  | 2011 | 13    |
|    | (b) the discretion of a Central Authority under Article 27 to reject an application when it is manifest that the requirements of the Convention are not fulfilled or that the application is otherwise not well founded should be exercised with extreme caution. The requested Central Authority should not reject an application solely on the basis that additional documents or information are needed. Close co-operation between the Central Authorities involved to ensure that relevant documentation is made available and to avoid undue delay in processing applications is strongly encouraged. The requested Central Authority may ask the requestor to provide these additional documents or information. If the requestor does not do so within a reasonable period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application. |      |       |

## 7. Legal aid and representation

|    | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|--|-------------------|-------------------|
| 36 | The Special Commission saw a correlation between the obligations of Central Authorities under article 7 f) to assist in the initiation of court proceedings for return of a child and the reservation under article 26 concerning lawyers' fees, made by a number of States. Countries with broad territories and either no legal aid system or territorially non-unified legal aid had experienced or might experience in the future difficulties in obtaining legal representation for applicants who could not afford legal fees. The Special Commission encourages such States to intensify their efforts to obtain legal counsel or advisers in order to avoid serious prejudice to the interests of the children involved. | 1989              | VI                |
| 37 | In States where an applicant for a return order is in effect unable to bring his/her application promptly before the courts in the requested State, this constitutes a serious hindrance to the rapid and efficient operation of the Convention. The Special Commission encourages such States to intensify their efforts to obtain legal counsel or advisers in order to avoid serious prejudice to the interests of the children involved.   | 2001              | 3.6               |
| 38 | Contracting States should take measures to ensure that parents who participate in custody proceedings after a child's return are   | 2001              | 5.4               |

|    |   |              |             |
|----|---|--------------|-------------|
|    | given adequate access to a country's legal system to adequately present their case. <sup>3</sup>  |              |             |
| 39 | The importance for the applicant of having effective access to legal aid and representation in the requested country is emphasised. Effective access implies: <ul style="list-style-type: none"> <li>a) the availability of appropriate advice and information which takes account of the special difficulties arising from unfamiliarity with language or legal systems;</li> <li>b) the provision of appropriate assistance in instituting proceedings;</li> <li>c) that lack of adequate means should not be a barrier to receiving appropriate legal representation.</li> </ul> | 2006         | 1.1.4       |
| 40 | The Central Authority should, in accordance with Article 7 g), do everything possible to assist the applicant to obtain legal aid or representation.  | 2006         | 1.1.5       |
| 41 | The Special Commission highlights the importance of ensuring effective access to justice for both parties in return and access proceedings, as well as for the child where appropriate, while recognising that the means of ensuring such effective access may vary from State to State, particularly for Contracting States that have made a reservation under Article 26 of the Convention.   | 2011         | 32          |
| 42 | The Special Commission emphasises that the difficulty in obtaining legal aid at first instance or an appeal, or of finding an experienced lawyer for the parties, may result in delays and may produce adverse effects for the child as well as for the parties. The important role of the Central Authority in helping an applicant to obtain legal aid quickly or to find experienced legal representatives is recognised.  | 2006<br>2011 | 1.1.6<br>33 |
| 43 | The Special Commission acknowledges the importance of ensuring effective access to justice for both parties, as well as the child where appropriate, <u>in custody proceedings</u> following the return of the child, while recognising that the means of ensuring such effective access may vary from State to State.  | 2011         | 34          |
| 44 | The Special Commission notes that an increasing number of States provide for the possibility of separate legal representation of a child in abduction cases.  | 2011         | 51          |

## 8. Locating the child

|    | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|---|-------------------|-------------------|
| 45 | Interpol can play a constructive and helpful role in locating abducted children. It is not necessary to institute criminal proceedings in order to seek such help, which may be obtained on the basis of a missing persons report, and indeed criminal proceedings may be counter-productive in particular cases. Central Authorities of a number of countries systematically discourage the institution of such proceedings. It is up to each country to | 1993              | 6                 |

<sup>3</sup> States are reminded of the *Convention of 25 October 1980 on International Access to Justice*, which *inter alia* generalises the principles of Art. 25 of the Child Abduction Convention.

|    |  |              |          |
|----|--|--------------|----------|
|    | determine what use could be made of the INTERPOL communications network, in connection with child abductions.  |              |          |
| 46 | Central Authorities, in seeking to locate children, should be able to obtain information from other governmental agencies and authorities and to communicate such information to interested authorities. Where possible, their enquiries should be exempted from legislation or regulations concerning the confidentiality of such information. Interpol can play a constructive and helpful role in locating abducted children.   | 1989<br>2001 | V<br>1.9 |
| 47 | The Special Commission re-emphasises the crucial importance of the Central Authorities' active role in locating the child who has been wrongfully removed or retained. Where the measures to discover the whereabouts of the child within a Contracting State are not taken directly by the Central Authority but are taken by an intermediary, the Central Authority should remain responsible for expediting communications with the intermediary and informing the requesting State of the progress of efforts to locate the child, and should continue to be the central channel for communication in this regard. | 2011         | 4        |

#### 9. Securing the voluntary return of the child

|    | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|---|-------------------|-------------------|
| 48 | Contracting States should encourage voluntary return where possible. It is proposed that Central Authorities should as a matter of practice seek to achieve voluntary return, as intended by Article 7 c) of the Convention, where possible and appropriate by instructing to this end legal agents involved, whether state attorneys or private practitioners, or by referral of parties to a specialist organisation providing an appropriate mediation service. The role played by the courts in this regard is also recognised. | 2001<br>2006      | 1.10<br>1.3.1     |
| 49 | Measures employed to assist in securing the voluntary return of the child or to bring about an amicable resolution of the issues should not result in any undue delay in return proceedings.  | 2001<br>2006      | 1.11<br>1.3.1     |
| 50 | Contracting States should ensure the availability of effective methods to prevent either party from removing the child prior to the decision on return.   | 2001              | 1.12              |

#### 10. Procedures & addressing delays

|    | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|--|-------------------|-------------------|
| 51 | Children who have been wrongfully removed or retained abroad are to be returned promptly, according to the Convention. Central Authorities should acknowledge receipt of an application immediately and endeavour to provide follow-up information rapidly. Practical arrangements for the safe return of children should be under contemplation from the commencement of the application. | 1993              | 4                 |
| 52 | Delay in legal proceedings is a major cause of difficulties in the operation of the Convention. All possible efforts should be made to   | 1993              | 7                 |

|    |  |              |              |
|----|--|--------------|--------------|
|    | expedite such proceedings. Courts in a number of countries normally decide on requests for return of a child on the basis only of the application and any documents or statements in writing submitted by the parties, without taking oral testimony or requiring the presence of the parties in person. This can serve to expedite the disposition of the case. The decision to return the child is not a decision on the merits of custody.  |              |              |
| 53 | The Special Commission calls upon Contracting States to bear in mind the considerable advantages to be gained by a concentration of jurisdiction to deal with Hague Convention cases within a limited number of courts.  | 2001         | 3.1          |
| 54 | [Courts organisation]<br>The progress already made in certain Contracting States, as well as the consideration now being given to this matter in others, is welcomed. Where a concentration of jurisdiction is not possible, it is particularly important that judges concerned in proceedings be offered appropriate training or briefing.  | 2001         | 3.2          |
| 55 | The Special Commission underscores the obligation (Article 11) of Contracting States to process return applications expeditiously, and that this obligation extends also to appeal procedures.   | 2001<br>2006 | 3.3<br>1.4.1 |
| 56 | The Special Commission calls upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications.  | 2001<br>2006 | 3.4<br>1.4.1 |
| 57 | The Special Commission calls for firm management by judges, both at trial and appellate levels, of the progress of return proceedings.   | 2001<br>2006 | 3.5<br>1.4.1 |
| 58 | Rules and practices concerning the taking and admission of evidence, including the evidence of experts, should be applied in return proceedings with regard to the necessity for speed and the importance of limiting the enquiry to the matters in dispute which are directly relevant to the issue of return.  | 2001         | 3.7          |
| 59 | The Special Commission welcomes the overwhelming support for giving children, in accordance with their age and maturity, an opportunity to be heard in return proceedings under the 1980 Convention independently of whether an Article 13(2) defense has been raised. The Special Commission notes that States follow different approaches in their national law as to the way in which the child's views may be obtained and introduced into the proceedings. At the same time the Special Commission emphasises the importance of ensuring that the person who interviews the child, be it the judge, an independent expert or any other person, should have appropriate training for this task where at all possible. The Special Commission recognises the need for the child to be informed of the ongoing process and possible consequences in an appropriate way considering the child's age and maturity. | 2011         | 50           |
| 60 | The Special Commission acknowledges that globally there is still a severe problem of delays that affect the efficient operation of the Convention.   | 2017         | 3            |
| 61 | The Special Commission acknowledges that some States have made progress in reducing delays and encourages States to review their procedures (including, where applicable, at the Central Authority, judicial, enforcement and mediation / ADR phases) in order to identify possible sources of delay and implement the   | 2017         | 4            |

adjustments needed to secure shorter time frames consistent with Articles 2 and 11 of the Convention.

#### 11. Article 13(1)(b)<sup>4</sup>

|    | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|--|-------------------|-------------------|
| 62 | The Article 13, paragraph 1 b), “grave risk” defence has generally been narrowly construed by courts in the Contracting States, and this is confirmed by the relatively small number of return applications which were refused on this basis according to the Statistical Analysis of Applications made in 1999 (Prel. Doc. No 3, March 2001). It is in keeping with the objectives of the Convention, as confirmed in the Explanatory Report by Elisa Pérez-Vera (at paragraph 34), to interpret this defence in a restrictive fashion. | 2001<br>2006      | 4.3<br>1.4.2      |
| 63 | The Special Commission notes that a large number of jurisdictions are addressing issues of domestic and family violence as a matter of high priority including through awareness raising and training.   | 2011              | 35                |
| 64 | Where Article 13(1) b) of the 1980 Convention is raised concerning domestic or family violence, the allegation of domestic or family violence and the possible risks for the child should be adequately and promptly examined to the extent required for the purposes of this exception.   | 2011              | 36                |
| 65 | The Special Commission affirms its support for promoting greater consistency in dealing with domestic and family violence allegations in the application of Article 13(1) b) of the 1980 Convention.   | 2011              | 37                |
| 66 | The Special Commission notes that the evaluation of the evidence and the determination of the grave risk of harm exception (Art. 13(1) b)), including allegations of domestic violence, are an exclusive matter for the authority competent to decide on the return, having due regard to the aim of the 1980 Convention to secure the prompt and safe return of the child.  | 2012              | 80                |

#### 12. Article 15

|    | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|---|-------------------|-------------------|
| 67 | The Special Commission records the problems, including delays, that were identified in the operation of Article 15. It recommends that the Permanent Bureau give further consideration to the steps which may be taken to ensure a more effective application of the Article. | 2011              | 63                |

<sup>4</sup> The Special Commission may wish to update these C&Rs to make reference to the most recent Statistical Study and the publication of the Guide to Good Practice under the HCCH 1980 Child Abduction Convention - Part VI - Article 13(1)(b).

|    |  |      |   |
|----|--|------|---|
| 68 | The Special Commission encourages discretion in the use of the Article 15 mechanism and due consideration of other procedures which obviate the need for an Article 15 request, such as the use of Articles 8(2)(f) and 14, and direct judicial communications, where appropriate. The Special Commission invites Contracting States to ensure expeditious and effective practices and procedures, including through legislation, for any Article 15 decision or determination, where such mechanisms are available. | 2017 | 6 |
|----|--|------|---|

### 13. Article 20

|    | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|--|-------------------|-------------------|
| 69 | The Special Commission notes that there have been very few reported cases in which a return order has been refused on the basis of Article 20 [...]. | 2001              | 4.5               |

### 14. Enforcement of return orders

|    | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|--|-------------------|-------------------|
| 70 | Delays in enforcement of return orders, or their non-enforcement, in certain Contracting States are matters of serious concern. The Special Commission calls upon Contracting States to enforce return orders promptly and effectively.  | 2001              | 3.9               |
| 71 | It should be made possible for courts, when making return orders, to include provisions to ensure that the order leads to the prompt and effective return of the child.  | 2001              | 3.10              |
| 72 | Efforts should be made by Central Authorities, or by other competent authorities, to track the outcome of return orders and to determine in each case whether enforcement is delayed or not achieved.  | 2001              | 3.11              |
| 73 | The Special Commission reaffirms the obligation of States to provide mechanisms, including, as appropriate, through legislation, written procedures or protocols, to ensure that orders for return are enforced in an effective and expeditious manner.  | 2017              | 13                |
| 74 | The Special Commission recommends that, to ensure compliance and avoid delays, a court order for return should be as detailed as possible, including, for example, the manner and timing of the return, and should specify with whom, where, when and how the child should be returned. Where possible, the order should make provision for voluntary compliance and specify the progressive coercive measures to be applied in the event of non-compliance. | 2017              | 14                |
| 75 | The Special Commission underlines the importance of information exchange, training and collaboration between the various actors, within and between States, who may be involved in enforcement processes, including enforcement officers, social workers and child welfare professionals   | 2017              | 15                |

### 15. Travel to the State of habitual residence

|    | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|---|-------------------|-------------------|
| 76 | Contracting States should, as far as possible, take measures to ensure that, save in exceptional cases, the abducting parent will be permitted to enter the Country to which the child is returned for the purpose of taking part in legal proceedings concerning custody or protection of the child.   | 2001              | 5.3               |
| 77 | In order to prevent immigration issues from obstructing the return of the child, Central Authorities and other competent authorities should where possible clarify the child's nationality and whether the child is in possession of the necessary travel documents as early as possible during the return procedure. When making a contact order, judges should bear in mind that there might be immigration issues that need to be resolved before contact can take place as ordered.   | 2011              | 30                |
| 78 | Where there is any indication of immigration difficulties which may affect the ability of a (non-citizen) child or taking parent to return to the requesting State or for a person to exercise contact or rights of access, the Central Authority should respond promptly to requests for information to assist a person in obtaining from the appropriate authorities within its jurisdiction without delay such clearances or permissions (visas) as are necessary. States should act as expeditiously as possible when issuing clearances or visas for this purpose and should impress upon their national immigration authorities the essential role that they play in the fulfilment of the objectives of the 1980 Convention. | 2011              | 31                |

### 16. Protective measures upon return

|    | <i>Description</i>   | <i>Year of SC</i>    | <i>C&amp;R No</i>       |
|----|--|----------------------|-------------------------|
| 79 | <p>To the extent permitted by the powers of their Central Authority and by the legal and social welfare systems of their country, Contracting States accept that Central Authorities have an obligation under Article 7 h) to ensure appropriate child protection bodies are alerted so they may act to protect the welfare of children upon return in certain cases where their safety is at issue until the jurisdiction of the appropriate court has been effectively invoked.</p> <p>It is recognised that, in most cases, a consideration of the child's best interests requires that both parents have the opportunity to participate and be heard in custody proceedings. Central Authorities should therefore co-operate to the fullest extent possible to provide information in respect of legal, financial, protection and other resources in the requesting State, and facilitate timely contact with these bodies in appropriate cases.</p> <p>The measures which may be taken in fulfilment of the obligation under Article 7 h) to take or cause to be taken an action to protect the welfare of children may include, for example:</p> <p>a) alerting the appropriate protection agencies or judicial authorities in the requesting State of the return of a child who may be in danger;</p> | 1997<br>2001<br>2006 | 1 & 3<br>1.13<br>1.1.12 |

|    |   |      |        |
|----|---|------|--------|
|    | <p>b) advising the requested State, upon request, of the protective measures and services available in the requesting State to secure the safe return of a particular child;</p> <p>c) encouraging the use of Article 21 of the Convention to secure the effective exercise of access or visitation rights.</p> <p>It is recognised that the protection of the child may also sometimes require steps to be taken to protect an accompanying parent.</p>                |      |        |
| 80 | Contracting States should consider the provision of procedures for obtaining, in the jurisdiction to which the child is to be returned, any necessary provisional protective measures prior to the return of the child.   | 2001 | 5.1    |
| 81 | <p>[...]</p> <p>The Special Commission affirms the important role that may be played by the requesting Central Authority in providing information to the requested Central Authority about services or facilities available to the returning child and parent in the requesting country. This should not unduly delay the proceedings.</p>  | 2006 | 1.1.12 |
| 82 | Courts in many jurisdictions regard the use of orders with varying names, e.g., stipulations, conditions, undertakings, as a useful tool to facilitate arrangements for return. Such orders, limited in scope and duration, addressing short-term issues and remaining in effect only until such time as a court in the country to which the child is returned has taken the measures required by the situation, are in keeping with the spirit of the 1980 Convention. | 2006 | 1.8.1  |
| 83 | When considering measures to protect a child who is the subject of a return order (and where appropriate an accompanying parent), a court should have regard to the enforceability of those measures within the country to which the child is to be returned. In this context, attention is drawn to the value of safe-return orders (including “mirror” orders) made in that country before the child’s return, as well as to the provisions of the 1996 Convention.   | 2006 | 1.8.2  |
| 84 | The Special Commission recognises the value of the assistance provided by the Central Authorities and other relevant authorities, under Articles 7(2) d), e) and h) and 13(3), in obtaining information from the requesting State, such as police, medical and social workers’ reports and information on measures of protection and arrangements available in the State of return.   | 2011 | 39     |
| 85 | The Special Commission also recognises the value of direct judicial communications, in particular through judicial networks, in ascertaining whether protective measures are available for the child and the accompanying parent in the State to which the child is to be returned.   | 2011 | 40     |
| 86 | It was noted that the 1996 Convention provides a jurisdictional basis, in cases of urgency, for taking measures of protection in respect of a child, also in the context of return proceedings under the 1980 Convention. Such measures are recognised and may be declared enforceable or registered for enforcement in the State to which the child is returned provided that both States concerned are Parties to the 1996 Convention.                                | 2011 | 41     |



**17. Rights of custody**

|    | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|---|-------------------|-------------------|
| 87 | It is recognised that, in most cases, a consideration of the child's best interests requires that both parents have the opportunity to participate and be heard in custody proceedings. Central Authorities should therefore co-operate to the fullest extent possible to provide information respecting, legal, financial, protection and other resources in the requesting State, and facilitate contact with these bodies in appropriate cases.  | 1997              | 2                 |
| 88 | Contracting States should take measures to remove obstacles to participation by parents in custody proceedings after a child's return.  | 2006              | 1.8.5             |
| 89 | The Special Commission reaffirms that Convention terms such as "rights of custody" should be interpreted having regard to the autonomous nature of the Convention and in the light of its objectives.   | 2011              | 44                |
| 90 | In relation to the autonomous Convention meaning of the term "rights of custody", the Special Commission takes notice of <i>Abbott v. Abbott</i> , 130 S.Ct. 1983 (2010), which supports the view that a right of access combined with a right to determine the residence of the child constitutes a "right of custody" for the purposes of the Convention and acknowledges that it is a significant contribution towards achieving consistency on an international level regarding its interpretation. | 2011              | 45                |
| 91 | The Special Commission recognises the considerable utility of the Country Profile and direct judicial communications in helping to determine the law of the State of the child's habitual residence for the purpose of establishing whether an applicant in return proceedings has "rights of custody" within the meaning of the Convention.  | 2011              | 46                |

**18. Criminal proceedings**

|    | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|----|--|-------------------|-------------------|
| 92 | The impact of a criminal prosecution for child abduction on the possibility of achieving a return of the child is a matter which should be capable of being taken into account in the exercise of any discretion which the prosecuting authorities have to initiate, suspend or withdraw charges.  | 2001              | 5.2               |
| 93 | The Special Commission reaffirms Recommendation 5.2 of the 2001 meeting of the Special Commission: "[...]" <i>[listed above]</i><br><br>The Special Commission underlines that Central Authorities should inform left-behind parents of the implications of instituting criminal proceedings including their possible adverse effects on achieving the return of the child.<br><br>In cases of voluntary return of the child to the country of habitual residence, Central Authorities should co-operate, in so far as national law allows, to cause all charges against the parent to be abandoned. | 2006              | 1.8.4             |

The Central Authorities should also inform the left-behind parent of the alternative means available to resolve the dispute amicably.

**19. Access / contact, including contact with the child pending return proceedings**

|     | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|---|-------------------|-------------------|
| 94  | Access to children is a normal counterpart to rights of custody. It would be desirable to have more information about the ultimate arrangements made for the exercise of access following the wrongful removal or retention of a child, both in cases where the child has been returned and in cases where return has been refused.   | 1993              | 5                 |
| 95  | The Special Commission recognises the deficiencies of the Convention in achieving the objective of securing protection for rights of access in transfrontier situations. This is regarded by Contracting States as a serious problem requiring urgent attention in the interests of the children and parents concerned.   | 2001              | 6.1               |
| 96  | (e) It is recognised that the provisions of the <i>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</i> has the potential to make a substantial contribution to the solution of certain problems surrounding cross-frontier access/contact. Those States which have already agreed in principle to ratify or accede to the 1996 Convention are urged to proceed to ratification or accession with all due speed. Other States are strongly encouraged to consider the advantages of ratification or accession and implementation. | 2002              | 2 (e)             |
| 97  | Recognising the limitations of the 1980 Convention, and in particular of Article 21, the Special Commission:<br><br>c) recommends that the Permanent Bureau should continue to examine ways to improve the operation of Article 21 and, through international judicial conferences and by other means, to stimulate discussion of and good practice in respect of the problems surrounding transfrontier contact and international relocation of children, taking into account also the experience with the application of the 1996 Convention and with legal regimes inspired by this Convention.  | 2006              | 1.7.2 (c)         |
| 98  | The Special Commission notes that in many Contracting States to the 1980 Convention applications concerning access under Article 21 are now processed in the same way as applications for return.   | 2011              | 17                |
| 99  | The Special Commission recognises that, pursuant to Articles 7 b) and 21 of the 1980 Convention, during pending return proceedings a requested Contracting State may provide for the applicant in the return proceedings to have contact with the subject child(ren) in an appropriate case.  | 2011              | 20                |
| 100 | The Special Commission agrees that an application to make arrangements for organising or securing the effective exercise of rights of access / contact under Article 21 can be presented to   | 2017              | 18                |

|     |   |      |    |
|-----|---|------|----|
|     | Central Authorities, independently of being linked or not, to an international child abduction situation.   |      |    |
| 101 | The Special Commission recognises that, subject to the best interests of a particular child, interruption to access / contact between the left-behind parent and the child should, where possible, be avoided, minimised and rectified. The Special Commission encourages States, in particular their competent authorities hearing a child abduction case, to consider, as quickly as possible, what appropriate interim access / contact and communication should take place between the left-behind parent and the child and proceed to make a determination in those terms as an urgent measure. Seeking and / or exercising interim access / contact per se should not be construed as acquiescence or consent to the wrongful removal or retention and should not produce additional delays in the return procedure | 2017 | 20 |

## 20. Mediation

|     | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|---|-------------------|-------------------|
| 102 | Efforts to achieve an amicable resolution of the issues should not be construed as giving rise to acquiescence or consent.  | 2001              | 4.4               |
| 103 | The Special Commission welcomes the mediation initiatives and projects which are taking place in Contracting States in the context of the 1980 Hague Convention, many of which are described in Preliminary Document No 5. <sup>5</sup>   | 2006              | 1.3.2             |
| 104 | The Special Commission welcomes the increasingly important role played by Central Authorities in international child abduction cases to bring about an amicable resolution of the issues including through mediation. At the same time, the Special Commission recognises that the use of measures to this end should not result in delay.  | 2011              | 15                |
| 105 | <del>The Special Commission notes the efforts already being made in certain States to establish a Central Contact Point in accordance with the Principles. States are encouraged to consider the establishment of such a Central Contact Point or the designation of their Central Authority as a Central Contact Point. The contact details of Central Contact Points are available on the Hague Conference website.</del> | 2011              | 61                |
| 106 | The Special Commission welcomes the widespread use of the Guide to Good Practice on Mediation, and the increasing use of mediation in international child abduction cases.  | 2017              | 10                |

**Commented [PB1]:** [N. 105] The PB suggests removing this C&R from the compilation because it has been covered by C&R 2017-11 listed below in line 211 under Section III, "Malta Process".

<sup>5</sup> S. Vigers, "Note on the development of mediation, conciliation and similar means to facilitate agreed solutions in transfrontier family disputes concerning children especially in the context of the Hague Convention of 1980", Prel. Doc. No 5 of October 2006. In order to be able to update the information contained in the afore-mentioned Prel. Doc. on the current number of mediation initiatives and projects taking place in Contracting States, the Permanent Bureau has prepared a questionnaire on the practical operation of the 1996 Child Protection Convention (Prel. Doc. No 2 of October 2022) and is currently preparing a further questionnaire on the 1980 Child Abduction Convention.

## 21. Use of model / standard forms

|     | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|--|-------------------|-------------------|
| 107 | The Special Commission reaffirms the Recommendation of the Fourteenth Session of the Conference to use the standard Request for Return form.   | 2006              | 1.1.13            |
| 108 | The Special Commission encourages Central Authorities to use the sample forms and checklists set out in Appendix 3 to the Guide to Good Practice under the Child Abduction Convention: Part I – Central Authority Practice.  | 2006              | 1.1.15            |
| 109 | <del>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.</del> | 2006              | 1.2.3             |
| 110 | <del>The Special Commission encourages the Permanent Bureau to continue its work (described in Info. Doc. No 4) to modernise the recommended Request for Return model form and to create a form that can be completed electronically. The Special Commission also requests that the Permanent Bureau continue its work to develop a standardised Request for Access form. The Special Commission requests that different language versions of the forms should be made available on the Hague Conference website. For this purpose, States are encouraged to provide the Permanent Bureau with translations.</del>                   | 2011<br>2006      | 10<br>1.1.14      |
| 111 | <del>The Special Commission agrees that the Hague Conference will not continue its work on the model consent to travel form (Prel. Doc. No 15) and that the Permanent Bureau should inform ICAO of this decision.</del>  | 2012              | 92                |
| 112 | The Special Commission welcomes the work undertaken to modernise the recommended request for return form and to develop a non-mandatory standardised access / contact application form under the 1980 Convention.  | 2017              | 8                 |
| 113 | The Special Commission invites the finalisation of the proposed forms in the light of comments provided by States with, if necessary, the assistance of a small Working Group. States are invited to share as soon as possible further comments on Preliminary Document No 12 with the Permanent Bureau. The Special Commission recommends that a high degree of priority be given to this work.   | 2017              | 9                 |
| 114 | While several States welcomed the work and progress made on the development of a model consent to travel form, highlighting at the same time its usefulness in the context of preventing child abductions, a number of States expressed strong reservations. Among others, concerns were raised that potential users of the form would be placed under the false impression that children in respect of whom temporary consent to leave the jurisdiction had been  | 2017              | 56                |

**Commented [PB2]:** [N. 109]: The PB suggests removing this C&R from the compilation because it has been covered by C&R 57 of 2017 listed below in this same section.

**Commented [PB3]:** [N. 110] The PB suggests removing this C&R from the compilation because it has been covered by C&R 57 of 2017 listed below in this same section.

**Commented [PB4]:** [N. 111] The PB suggests removing this C&R from the compilation because it has been covered by C&R 57 of 2017 listed below in this same section.

|     |  |      |    |
|-----|--|------|----|
|     | given, by using the form, would be protected with a high degree of security from potential abductions.   |      |    |
| 115 | In the light of the very different views expressed, it was decided that the Permanent Bureau would not undertake further work on the development of a model consent to travel form at this stage. Rather it was recommended that Contracting States share information on the requirements that exist under their domestic legislation in order for a child to be allowed to enter or leave the jurisdiction. States are furthermore invited to provide, where available, links to official consent to travel forms that have been developed in their jurisdiction. This information should be included in the Country Profile under the 1980 Convention. | 2017 | 57 |
| 116 | States that wish to develop a domestic consent to travel form are invited to consider the information provided in Preliminary Document No 4.   | 2017 | 58 |

## 22. Statistics & Research

|     | <i>Description</i>  | <i>Year of SC</i>    | <i>C&amp;R No</i>    |
|-----|---|----------------------|----------------------|
| 117 | 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.   | 2001<br>2006<br>2011 | 1.14<br>1.1.16<br>22 |
| 118 | The Special Commission recognises the value of research, including socio-legal research, into the operation of the Convention and into the outcomes of cases dealt with under the Convention. [...]<br><br>The Special Commission recognises the value of evidence-based research to strengthen existing knowledge on the effects of wrongful removal or retention of children internationally. In particular, it would be desirable to have further research addressing: (1) the short-term and long-term outcomes for children and relevant family members, including taking and left-behind parents; and (2) the impact and effectiveness of protective measures, other judicial and legal processes, support services and / or arrangements to apply post-return. The Special Commission acknowledges that this is not part of the work programme of the Permanent Bureau, and that it places no burden on individual States. | 2001<br>2017         | 8.2<br>81            |
| 119 | <del>The Special Commission also welcomes the development of INCASTAT, the statistical database for the 1980 Convention and invites all Central Authorities to make their annual returns of statistics using the database for which user names and passwords will be distributed in the near future.</del>  | 2006                 | 1.1.18               |
| 120 | The Special Commission reaffirms the utility of accurate statistics for the effective evaluation of the 1980 Convention's operation, and welcomes the statistical survey of cases under the Convention for the year 2015 (Prel. Docs Nos 11 A, 11 B and 11 C) compiled by Nigel Lowe and Victoria Stephens, based on data collected for the   | 2017                 | 2                    |

**Commented [PB5]:** [N. 119] The PB suggests deleting this C&R due to the discontinuation of INCASTAT as decided by the Council of General Affairs and Policy (see C&D 19 of CGAP 2021).

first time using INCASTAT (the International Child Abduction Statistical Database) [...]<sup>6</sup>

### 23. INCADAT

|     | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|--|-------------------|-------------------|
| 121 | The Permanent Bureau cannot, with its present resources, monitor all of the case law under the Convention in the different States Parties and communicate this case law to the Central Authorities and to practising lawyers. The Permanent Bureau, however, should make an effort to collect the most significant decisions handed down by the courts and, where possible, communicate the essential aspects of these to the Central Authorities. For this purpose, a standard form was envisaged which Central Authorities might use in reporting court decisions to the Permanent Bureau. This effort did not preclude that the Central Authorities might also send copies of routine court decisions to the Permanent Bureau for collection and ultimate use for statistical purposes. | 1993              | 9                 |
| 122 | The Special Commission welcomes with enthusiasm the establishment by the Permanent Bureau of the International Child Abduction Database and congratulates all those responsible for its development. INCADAT will be of significant assistance to the judiciary, Central Authorities, the legal profession, as well as individuals affected by or interested in child abduction. Contracting States are encouraged to collaborate with the Permanent Bureau to explore possible sources of funding (including partnership funding) or material assistance to assist in the completion of INCADAT and to secure its position for the future.  | 2001              | 8.1               |
| 123 | <del>The Special Commission recognises the great value of INCADAT and welcomes further exploration of the extension of INCADAT to the 1996 Convention. The Special Commission suggests further exploration of the desirability and feasibility of the extension of INCASTAT to the 1996 Convention.</del>  | 2011              | 56                |
| 124 | The Special Commission takes note of the report of Professor McEleavy (INCADAT Legal Consultant) which, in answering concerns expressed as to the quality of the database, stressed that continued enhancements are being made to INCADAT but that future improvements are subject to available resources.   | 2012              | 89                |
| 125 | The Special Commission welcomes the launch of the enhanced INCADAT (International Child Abduction Database). It recognises the value of INCADAT for the effective operation of the 1980 Convention and continues to support it, underlining the need for the database to be as up to date as possible, subject to available resources. [...]   | 2017              | 67                |
| 126 | The Special Commission further supports the consolidation of a global network of INCADAT correspondents to ensure a wide geographic coverage for the database, and encourages all States to designate a correspondent for this purpose. The Permanent Bureau should be informed of these designations to grant each correspondent access to the INCADAT content management   | 2017              | 68                |

**Commented [PB6]:** [N. 123] The PB suggests removing this C&R from the compilation because it has been covered by C&R 70 of 2017 listed below in this same section.

<sup>6</sup> The Permanent Bureau intends to insert a footnote with an update in the final version of the Compilation.

|     |   |      |    |
|-----|---|------|----|
|     | system into which correspondents should enter case details that the Permanent Bureau will review and publish.   |      |    |
| 127 | The Special Commission encourages INCADAT correspondents, Central Authorities and members of the IHNJ to enter relevant case law on direct judicial communications in the INCADAT content management system, if possible, or to share such cases with the Permanent Bureau.   | 2017 | 69 |
| 128 | The Special Commission supports the extension of INCADAT to include, in the long term, case law under the 1996 Convention, subject to available resources. It recommends that Contracting States share case law dealing with the application of the 1996 Convention with the Permanent Bureau, in order for the functional requirements of this extension to be identified. | 2017 | 70 |

#### 24. Country Profiles

|     | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|--|-------------------|-------------------|
| 129 | Central Authorities are reminded of the valuable role that the Country Profile for the 1980 Convention is expected to play in enabling States to exchange information on the requirements for making an application in the requested State.  | 2011              | 14                |
| 130 | All Contracting States that have not yet completed the Country Profile are strongly encouraged to do so as soon as possible.   | 2011              | 25                |
| 131 | The Special Commission recommends that Contracting States regularly update their Country Profile to ensure that the information remains current. The Permanent Bureau will send an annual reminder to Contracting States in this regard.   | 2011              | 26                |
| 132 | The Country Profile does not replace the Standard Questionnaire for Newly Acceding States. However, all newly acceding and ratifying States are encouraged to complete the Country Profile as soon as possible following their accession to or ratification of the 1980 Convention.  | 2011              | 27                |
| 133 | The Special Commission urges Contracting States that have not yet done so to complete a Country Profile for the 1980 Convention as soon as possible. With a view to facilitating its completion and its updating, as well as facilitating the extraction of information, the Special Commission recognises the value of developing, subject to supplementary voluntary contributions, an electronic Country Profile ("e-Country Profile") for the 1980 Convention. | 2017              | 77                |

#### 25. Monitoring and review

|     | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|--|-------------------|-------------------|
| 134 | The Special Commission agreed 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. [...]. | 1989              | VII               |

|     |  |              |           |
|-----|--|--------------|-----------|
| 135 | The Special Commission reaffirms the value of Special Commission meetings to review the operation of the Convention, and regards the four-year cycle for general reviews as satisfactory.  | 1993<br>2001 | 10<br>2.4 |
| 136 | The Special Commission supports the holding of additional meetings to address specific issues when these are clearly shown to be necessary.  | 2001         | 2.5       |
| 137 | In order to enable less wealthy Contracting States to be represented at Special Commission meetings, the Secretary General should, when convoking a meeting, invite Contracting States to consider giving support to specific States or contributing to a common fund. | 2001         | 2.6       |

## 26. ECHR cases

|     | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|---|-------------------|-------------------|
| 138 | The Special Commission notes that the European Court of Human Rights has in decisions taken over many years expressed strong support for the 1980 Convention, typified by a statement made in the case of <i>Maumousseau and Washington v. France</i> (No 39388/05, ECHR 2007 XIII) that the Court was “entirely in agreement with the philosophy underlying the Hague Convention”.   | 2011              | 47                |
| 139 | The Special Commission notes the serious concerns which have been expressed in relation to language used by the court in its recent judgments in <i>Neulinger and Shuruk v. Switzerland</i> (Grand Chamber, No 41615/07, 6 July 2010) and <i>Raban v. Romania</i> (No 25437/08, 26 October 2010) in so far as it might be read “as requiring national courts to abandon the swift, summary approach that the Hague Convention envisages, and to move away from a restrictive interpretation of the Article 13 exceptions to a thorough, free-standing assessment of the overall merits of the situation” (per the President of the European Court of Human Rights, extrajudicially (Info. Doc. No 5)).  | 2011              | 48                |
| 140 | The Special Commission notes the recent extrajudicial statement made by the President of the European Court of Human Rights (see above) in which he states that the decision in <i>Neulinger and Shuruk v. Switzerland</i> does not signal a change of direction for the court in the area of child abduction, and that the logic of the Hague Convention is that a child who has been abducted should be returned to the State of his / her habitual residence and it is only there that his / her situation should be reviewed in full.   | 2011              | 49                |
| 141 | Following Conclusions and Recommendations Nos 48 and 49 of the Sixth Meeting of the Special Commission in 2011 (Part I), the Special Commission notes the subsequent developments in <i>X v. Latvia</i> , in particular the Court’s assessment under the title “General principles” (paras 92-108), in which the Grand Chamber of the European Court of Human Rights stated, <i>inter alia</i> , that “in the context of an application for return made under the Hague Convention, which is accordingly distinct from custody proceedings, the concept of the best interests of the child must be evaluated in the light of the exceptions provided for by the Hague Convention [references to Arts 12, 13, and 20 of the Hague Child Abduction Convention]” (Grand Chamber, No 27853/09, 26 November 2013). | 2017              | 17                |



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para. 101; see also para. 107 where the Grand Chamber stressed that these “exceptions must be interpreted strictly”).

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## II. 1996 Child Protection Convention

### 1. Scope (*ratione materiae*)

|     | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|--|-------------------|-------------------|
| 142 | The Special Commission notes that the domestic laws of Contracting States to the 1996 Convention do not have to provide for all types of measures of protection that fall under the scope of the Convention.   | 2017              | 29                |
| 143 | The Special Commission recalls paragraphs 90 to 91 of the Explanatory Report of the 1996 Convention which provide useful information for cases where a measure of protection falling under the scope of the Convention has been taken in one State which is unknown, or the conditions of application of which significantly differ, in a new State of habitual residence of a child, to the extent that the measure is denatured or at least weakened.  | 2017              | 30                |
| 144 | More specifically, the Special Commission notes that in the case of a change of habitual residence of the child (Art. 5(2)), for example resulting from a long-term cross-border placement (Art. 33), the measures of protection established in the former State of habitual residence will subsist in the new State of habitual residence (Art. 14). The law of the new State of habitual residence will govern, from the time of the change, the conditions of application of the measure taken in the State of the former habitual residence (Art. 15(3)). If necessary, the competent authorities of the new State of habitual residence could adapt the measure taken in the former State of habitual residence or modify it in accordance with Article 5(2). The authorities of the new State of habitual residence may consult, if necessary, the authorities of the State of the former habitual residence when adapting or modifying such measures. | 2017              | 31                |
| 145 | The Special Commission recalls that private agreements between parents on parental responsibility ( <i>i.e.</i> , parental agreements) do fall under the scope of the Convention through the application of the rules on applicable law, if consistent with Article 3 and not excluded by Article 4. Such parental agreements cannot be subject to the rules on recognition and enforcement, unless they have been confirmed or approved by a competent authority, or have been subject to an act of a similar nature by a competent authority with a view to giving such agreements force of law (see Art. 23, which provides for recognition by operation of law of measures taken by the authorities of a Contracting State).   | 2017              | 32                |

### 2. Central Authorities – Co-operation

|     | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|--|-------------------|-------------------|
| 146 | The Central Authorities designated by the Contracting States play an important role in making the Convention function. To this end, they should be given a mandate which is sufficiently broad, qualified personnel and resources, including modern means of communication, necessary to carry out their functions effectively. Central Authorities should have a regular staff, able to develop expertise in the operation of the Convention. | 2017              | 35                |

|     |  |      |    |
|-----|--|------|----|
| 147 | Contracting States should inform the Permanent Bureau promptly of the contact details of their Central Authority(ies), and Central Authorities should inform the Permanent Bureau promptly of the names of contact persons, of the means by which they may be contacted and of their languages of communication. Central Authorities should promptly inform the Permanent Bureau of any changes in these details.  | 2017 | 36 |
| 148 | Central Authorities should co-operate closely and respond promptly to requests for co-operation. To this end they should, as far as possible, use rapid means of communication, bearing in mind the need for confidentiality.  | 2017 | 37 |
| 149 | Each Central Authority is encouraged, where feasible, to establish and regularly update a website, details of which should be furnished to the Permanent Bureau for the purpose of establishing a link with the HCCH website.  | 2017 | 38 |
| 150 | Central Authorities are encouraged, in addressing any practical problems concerning the proper functioning of the Convention, to engage in dialogue with one another. Where a group of Central Authorities share a common problem, consideration should be given to joint meetings which might in some cases be facilitated by the HCCH.   | 2017 | 39 |
| 151 | The Special Commission notes that many Central Authorities may provide certain degrees of assistance (both when the 1980 Convention and / or the 1996 Convention apply), both to individuals within their own State and to foreign Central Authorities on behalf of an individual residing abroad. Requests for assistance may encompass such matters as: securing rights of access; the return of children (both when the 1980 Convention and / or the 1996 Convention apply); the protection of runaway children; reporting on the situation of a child residing abroad; post-return reports for children returned to their habitual residence; the recognition or non-recognition of a measure taken abroad (advanced recognition); and, the enforceability of a foreign measure of protection. | 2017 | 40 |
| 152 | The Special Commission recommends that the Permanent Bureau, in consultation with interested Contracting States, develop a model Co-operation Request Form, that may be used for any request under the framework of the 1996 Convention.   | 2017 | 41 |
| 153 | The Special Commission emphasises, for the purpose of providing reports or information under Articles 32, 34 and 35, the importance of swift and efficient communications between Central Authorities and competent authorities of the requested States, in order to avoid undue delays at all stages of the procedures and facilitate the effective protection of children. These reports and information should be provided as quickly as possible.  | 2017 | 44 |

### 3. Cross-border placement of a child

|     | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|--|-------------------|-------------------|
| 154 | The Special Commission notes that only decisions on placements or provision of care made or approved by a competent authority fall | 2017              | 42                |

|     |  |      |    |
|-----|--|------|----|
|     | under the scope of Article 33. The Special Commission recalls that the consultation mechanism provided by Article 33 is mandatory for any placement or provision of care by kafala or an analogous institution that is to take place in another Contracting State, including the case where the care is provided by relatives of the child.  |      |    |
| 155 | This consultation should occur well before taking a decision about the placement or provision of care, and it should be as comprehensive as possible (including among other things, a clear description of the measure of protection, status of the child, health (where appropriate) and family history, migration conditions of the child in the receiving country) in order to allow the respective authorities to take an informed decision in the best interests of the child. The decision on consent to the placement by the requested State should be provided as quickly as possible. | 2017 | 43 |

#### 4. Article 40

|     | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|--|-------------------|-------------------|
| 156 | The Special Commission takes note of the very limited experience with respect to the issuance of certificates under Article 40 of the 1996 Convention; it considers the development of a model certificate to be premature at this stage. Subject to necessary adaptations, the model certificate developed for the purposes of Article 38 of the Hague Convention of 13 January 2000 on the International Protection of Adults may be used for the issuance of a certificate under Article 40 of the 1996 Convention. Contracting States are invited to adapt other existing model certificates developed or used for the purposes of Article 40. | 2017              | 46                |
| 157 | The Special Commission further encourages Contracting States that have not yet done so to designate the authorities competent to draw up the certificate in accordance with Article 40(3) of the 1996 Convention.  | 2017              | 47                |

#### 5. Recognition and Enforcement

|     | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|--|-------------------|-------------------|
| 158 | The Special Commission recognises the great importance of simple and rapid procedures to be employed for the recognition and / or declaration of enforceability or registration for the purposes of enforcement of measures from other Contracting States. To this end, States are encouraged to consider implementing legislation providing for stipulated time frames, the use of specialised judges or registrars and the concentration of jurisdiction for procedures in certain courts, among others. | 2017              | 48                |
| 159 | The Special Commission highlights the use and particular utility of Article 24 in international relocation cases, in order to ensure the advance recognition of access /contact arrangements in the foreign jurisdiction before the relocation of the child. Expedited Article 24 procedures in the Contracting State to which relocation is sought are  | 2017              | 49                |

vital.

|     |   |      |    |
|-----|---|------|----|
| 160 | The Special Commission notes that, in order to facilitate the recognition and enforcement of an order for measures, where a competent authority decides to hear a child, there are a range of ways in which it may do so within the diversity of legal systems and approaches. The competent authority should incorporate into the order for measures a record of the way the child was heard, or if a decision is made not to hear the child, an indication that consideration was given to doing so and the reasons for the decision not to hear the child. | 2017 | 50 |
|-----|---|------|----|

### III. 1980 Child Abduction and 1996 Child Protection Conventions

#### 1. Benefits and use of the 1996 Convention in relation to the 1980 Convention

|     | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|--|-------------------|-------------------|
| 161 | The Special Commission recognises the potential advantages of the <i>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</i> as an adjunct to the 1980 Convention, and recommends that Contracting States should consider ratification or accession.  | 2001              | 7.1               |
| 162 | Recognising the limitations of the 1980 Convention, and in particular of Article 21 [rights of access], the Special Commission recommends that the Permanent Bureau should continue to make every effort to assist States in their consideration of the 1996 Convention and to promote its widespread ratification. This applies both to States which are Parties to the 1980 Convention and those which are not.  | 2006              | 2.3               |
| 163 | The Special Commission notes the many benefits and use of the 1996 Convention in relation to the use of the 1980 Convention, including the primary role played by the authorities of the State of habitual residence of the child, rules on jurisdiction, applicable law, recognition and enforcement and co-operation with respect to the organisation and enforcement of rights of custody, access / contact, urgent measures of protection, possible post-return assistance and relocation. | 2017              | 26                |
| 164 | When taking measures of protection in accordance with Article 11 of the 1996 Convention in a child abduction case (for example, to facilitate interim access or ensure safe return), competent authorities are invited, preferably through Central Authorities or members of the International Hague Network of Judges (IHNJ) to obtain information on available measures of protection in the other State with a view to ensuring the effective implementation of such measures.              | 2017              | 27                |
| 165 | Where appropriate, after the return of a child to his or her State of habitual residence, a Central Authority or other competent authority of the Contracting State which ordered the return of the child may request, with supporting reasons, in accordance with Article 32 of the 1996 Convention, from the Central Authority of the Contracting State in which the child is habitually resident a report on the situation of the child.  | 2017              | 28                |

#### 2. New Contracting States visit to experienced Contracting States

|     | <i>Description</i>  | <i>Year of SC</i>   | <i>C&amp;R No</i> |
|-----|---|---------------------|-------------------|
| 166 | Immediately following a State becoming Party to the 1980 Convention/ <b>1996 Convention</b> (or, in an appropriate case, where a State is preparing to do so or has expressed a strong interest in doing so), the State in question should be offered, by way of a standard letter from the Permanent Bureau, the opportunity to visit an experienced Contracting State to the 1980 Convention/ <b>1996 Convention</b> for the purpose of gaining knowledge and | 2011<br><b>2017</b> | 28<br><b>24</b>   |

|     |  |                     |                 |
|-----|--|---------------------|-----------------|
|     | understanding regarding the effective practical operation of the 1980 Convention/ <b>1996 Convention.</b>  |                     |                 |
| 167 | The Permanent Bureau will maintain a list of all experienced Contracting States willing to accept such a visit and, when a newly acceding / ratifying (or interested) State responds positively to an offer, will provide details of Contracting States prepared to receive the newly acceding / ratifying (or interested) State for the two States concerned to organise and arrange the visit. | 2011<br><b>2017</b> | 29<br><b>25</b> |

### 3. Implementation and interpretation

|     | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|---|-------------------|-------------------|
| 168 | The Special Commission recommends that the Hague Conference on Private International Law, through its Permanent Bureau, continue its current work to support the effective practical operation of the 1980 and 1996 Conventions and, in this regard, the Permanent Bureau should: <p>(a) focus on the promotion, implementation and effective practical operation of the 1980 and 1996 Conventions;</p> <p>(b) encourage regional activities including conferences, seminars and training;</p> <p>(c) where requests for assistance are received from individuals, provide general information concerning the relevant competent authority(ies); and</p> <p>(d) consider ways to enhance further the effectiveness of Special Commission meetings to review the practical operation of the 1980 and 1996 Conventions.</p> | 2012              | 87                |

### 4. Protection of the child

|     | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|---|-------------------|-------------------|
| 169 | In considering the protection of the child under the 1980 and 1996 Conventions regard should be given to the impact on a child of violence committed by one parent against the other. | 2011              | 42                |

### 5. International family relocation

|     | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|--|-------------------|-------------------|
| 170 | Courts take significantly different approaches to relocation cases, which are occurring with a frequency not contemplated in 1980 when the Convention was drafted. It is recognised that a highly restrictive approach to relocation applications may have an adverse effect on the operation of the 1980 Convention.  | 2001              | 7.3               |
| 171 | The Special Commission concludes that parents, before they move with their children from one country to another, should be encouraged not to take unilateral action by unlawfully removing a child but to make appropriate arrangements for access and contact preferably by agreement, particularly where one parent intends to remain behind after the move. | 2006              | 1.7.4             |

|     |  |      |       |
|-----|--|------|-------|
| 172 | The Special Commission encourages all attempts to seek to resolve differences among the legal systems so as to arrive as far as possible at a common approach and common standards as regards relocation.  | 2006 | 1.7.5 |
| 173 | <del>The Special Commission recognises that the Washington Declaration<sup>7</sup> provides a valuable basis for further work and reflection.</del>  | 2012 | 83    |
| 174 | The Special Commission notes support for further work being undertaken to study and gather information concerning the different approaches adopted in various legal systems to international family relocation, in relation to private international law issues and the application of the 1996 Convention.  | 2012 | 84    |
| 175 | <del>Recognising the value of the 1996 Convention to international family relocation, States that have not yet done so are encouraged to consider ratification of or accession to the Convention.</del>  | 2012 | 85    |
| 176 | The Special Commission recalls the importance of securing effective access to procedures to the parties in international family relocation cases. In this regard, the Special Commission notes that: i) mediation services may assist the parties to solve these cases or prepare for outcomes; ii) the Washington Declaration of 25 March 2010 on Cross-border Family Relocation may be of interest to competent authorities, in particular in the absence of domestic rules on this matter. The Special Commission recommends joining the 1996 Convention. | 2017 | 21    |

**Commented [PB7]:** [N. 173] The PB suggests removing this C&R from the compilation because it has been covered by C&R 21 of 2017 listed below in this same section.

**Commented [PB8]:** [N. 175] The PB suggests removing this C&R from the compilation because it has been covered by C&R 21 of 2017 listed below in this same section.

## 6. Access /contact

|     | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|--|-------------------|-------------------|
| 177 | The Special Commission reaffirms the priority it attaches to ongoing work to improve transfrontier protection of rights of access / contact. It recognises the interest in this matter among many States, including those that are not Parties to the Convention of 1980 and the important role in this regard that can be played by the Convention of 1996. | 2006              | 1.7.1             |
| 178 | Central Authorities designated under the 1980 and / or 1996 Conventions are encouraged to take a pro-active and hands-on approach in carrying out their respective functions in international access / contact cases.  | 2011              | 18                |
| 179 | The Special Commission reaffirms the principles set out in the General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children and strongly encourages Contracting States to the 1980 and 1996 Conventions to review their practice in international access cases in light of these principles, where necessary.                  | 2011              | 19                |

## 7. Judicial Communications

|  | <i>Description</i> | <i>Year of SC</i> | <i>C&amp;R No</i> |
|--|--------------------|-------------------|-------------------|
|--|--------------------|-------------------|-------------------|

<sup>7</sup> Resulting from the International Judicial Conference on Cross-Border Family Relocation held in Washington, DC, United States of America from 23-25 March 2010, co-organised by the HCCH and the International Centre for Missing and Exploited Children, with the support of the United States Department of State.



|     |  |              |              |
|-----|--|--------------|--------------|
| 180 | Contracting States are encouraged to consider identifying a judge or judges or other persons or authorities able to facilitate at the international level communications between judges or between a judge and another authority.  | 2001<br>2006 | 5.5<br>1.6.3 |
| 181 | Contracting States should actively encourage international judicial co-operation. This takes the form of attendance of judges at judicial conferences by exchanging ideas/communications with foreign judges or by explaining the possibilities of direct communication on specific cases.<br><br>In Contracting States in which direct judicial communications are practised, the following are commonly accepted safeguards: <ul style="list-style-type: none"> <li>- communications to be limited to logistical issues and the exchange of information;</li> <li>- parties to be notified in advance of the nature of proposed communication;</li> <li>- record to be kept of communications;</li> <li>- confirmation of any agreement reached in writing;</li> <li>- parties or their representatives to be present in certain cases, for example via conference call facilities.</li> </ul> | 2001<br>2006 | 5.6<br>1.6.3 |
| 182 | The meetings of judges from different jurisdictions foster international understanding, they promote judicial co-operation and they help to spread helpful practices and precedents across jurisdictions. The Hague Conference should continue to remain active in this area, providing assistance where it is requested, supporting the development of judicial cooperation and communications, both generally and in the context of individual cases where required, and continuing publication of Judges' Newsletters on International Child Protection.  | 2001<br>2002 | 2.10<br>4    |
| 183 | The Special Commission acknowledges that effective functioning of the 1980 Hague Convention depends on the concerted efforts of all interveners in matters of international child abduction, including judges and Central Authorities on internal and international levels.  | 2006         | 1.6.2        |
| 184 | The Special Commission recognises that, having regard to the principle of the separation of powers, the relationship between judges and Central Authorities can take different forms.  | 2006<br>2011 | 1.6.4<br>67  |
| 185 | The Special Commission continues to encourage meetings involving judges and Central Authorities at a national, bilateral or multilateral level as a necessary part of building a better understanding of the respective roles of both institutions.  | 2006<br>2011 | 1.6.5<br>67  |
| 186 | The Special Commission encourages the development of the established pattern of conferences for specialist family law judges (national, bilateral and multilateral) and emphasises the importance of both the regional and global frameworks that have been developed.   | 2006         | 1.6.6        |
| 187 | Central Authorities are encouraged to continue to provide information about and facilitate direct judicial communications including, where there are language difficulties, through the provision of translation services where appropriate and feasible.  | 2011         | 9            |

|     |  |      |    |
|-----|--|------|----|
| 188 | The Special Commission also welcomes the actions taken by States and regional organisations nationally and regionally regarding the establishment of judicial networks and the promotion of judicial communications.   | 2011 | 65 |
| 189 | The Special Commission emphasises the importance of direct judicial communications in international child protection and international child abduction cases.  | 2011 | 66 |
| 190 | Where there is concern in any State as to the proper legal basis for direct judicial communications, whether under domestic law or procedure, or under relevant international instruments, the Special Commission invites States to take the necessary steps to ensure that such a legal basis exists.   | 2011 | 69 |
| 191 | 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.  | 2011 | 74 |
| 192 | The Special Commission re-emphasises the importance of inter-disciplinary judicial conferences and seminars and the contribution they make to the effective functioning of the 1980 and 1996 Conventions. The Special Commission encourages States to support and provide continued funding for such meetings and other meetings in support of the consistent application of the Conventions.  | 2011 | 75 |
| 193 | The Special Commission supports that consideration be given to the inclusion of a legal basis for direct judicial communications in the development of any relevant future Hague Convention.   | 2012 | 78 |
| 194 | In relation to future work, the Special Commission recommends that the Permanent Bureau: <ul style="list-style-type: none"> <li>(a) promote the use of the Emerging Guidance and General Principles on Judicial Communications;</li> <li>(b) continue to encourage the strengthening and expansion of the International Hague Network of Judges; and</li> <li>(c) maintain an inventory of domestic legal bases relating to direct judicial communications.</li> </ul> | 2012 | 79 |

## 8. IHNJ and The Judges' Newsletter

|     | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|--|-------------------|-------------------|
| 195 | The Special Commission welcomes the significant growth in the number of members of the IHNJ in the period from 2011 to 2017 which now includes 124 judges from 81 States. <sup>8</sup> States that have not yet designated a Hague Network judge are strongly encouraged to do so. | 2017              | 59                |
| 196 | The Special Commission recognises the value of the attendance and participation of judges at its meetings. States are invited to consider and, where possible, to facilitate and encourage the attendance of members of the IHNJ as participants in national delegations.          | 2017              | 60                |

<sup>8</sup> The Permanent Bureau intends to insert a footnote with updated information pertaining to the IHNJ in the final version of the Compilation.

|     |  |                              |                          |
|-----|--|------------------------------|--------------------------|
| 197 | The Special Commission welcomes the experience shared by judges using direct judicial communications in the context of Articles 8, 9, 34 and 35 of the 1996 Convention.  | 2017                         | 61                       |
| 198 | The Special Commission welcomes the increasing co-operation within States between the member(s) of the IHNJ and the relevant Central Authorities resulting in the enhanced operation of the 1980 and 1996 Conventions.   | 2017                         | 62                       |
| 199 | The Special Commission recognises the value of regular meetings of the IHNJ at the regional or global level, subject to available supplementary resources.   | 2017                         | 65                       |
| 200 | The Special Commission recognises the value of the use of information technology for efficient communication and sharing of data and invites the Permanent Bureau to explore further, subject to available resources, the development of secured systems of communications, such as secured e-conferencing, in particular for members of the IHNJ. | 2017                         | 66                       |
| 201 | The Special Commission supports the continued electronic publication of The Judges' Newsletter, subject to available resources, to be edited in-house. States and members of the IHNJ are invited to share with the Permanent Bureau topics for "special focus" that they would like to see addressed in future issues of The Judges' Newsletter.  | 2001<br>2006<br>2011<br>2017 | 8.3<br>1.6.9<br>73<br>72 |

#### 9. Post-Convention assistance, including regional activities<sup>9</sup>

|     | <i>Description</i>   | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|--|-------------------|-------------------|
| 202 | The Special Commission welcomes the report on post-Convention services and assistance provided in Preliminary Document No 13, and encourages the Permanent Bureau to continue providing its post-Convention services on the promotion, implementation and effective practical operation of the 1980 and 1996 Conventions.  | 2017              | 78                |
| 203 | The Special Commission acknowledges the high appreciation expressed by States for the post-Convention services provided by the Permanent Bureau through its Regional Offices, noting the substantive impact this has on the work carried out by Central Authorities and Judges. The Special Commission recommends the Permanent Bureau to continue exploring means to expand its post-Convention services in Africa. | 2017              | 79                |

#### 10. Guides to Good Practice

|     | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|---|-------------------|-------------------|
| 204 | 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 | 2011              | 52                |

<sup>9</sup> The Special Commission may wish to adopt an updated Conclusion & Recommendation in relation to post-Convention work and in light of Preliminary Documents presented to inform its Eighth Meeting.

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.

## 11. Regional activities

|     | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|---|-------------------|-------------------|
| 205 | <del>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. The value of the Hague Convention model and principles are recognised for use with non-Hague Convention States as in the context of the Malta Process.</del> | 2006              | 1.9.1             |
| 206 | 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.   | 2006              | 1.9.2             |
| 207 | The importance of the appointment of the Liaison Legal Officer for Latin America is welcomed and the impact already made in strengthening the operation of the Convention in the Region is recognised.  | 2006              | 1.9.3             |
| 208 | The Special Commission notes the strong support for the continuing work in strengthening the Latin American Regional Office and in developing a Regional Office in the Asia-Pacific region.   | 2012              | 88                |

**Commented [PB9]:** [N. 205-208] The PB suggests removing these C&Rs from the compilation because the topics are covered by the C&Rs of 2017 in Section III, Item 9 above, named "Post-Convention assistance, including regional activities".

## 12. Malta Process

|     | <i>Description</i>  | <i>Year of SC</i> | <i>C&amp;R No</i> |
|-----|---|-------------------|-------------------|
| 209 | The Special Commission expresses appreciation for the work carried out by the Working Party on Mediation in the context of the Malta Process and welcomes the Principles for the establishment of mediation structures in the context of the Malta Process (Prel. Doc. No 6).   | 2011              | 60                |
| 210 | The Special Commission notes the request of the 2011 Council on General Affairs and Policy of the Hague Conference that the Working Party should continue to work on the implementation of mediation structures and, in particular, with the support of the Permanent Bureau, and in light of discussions in the Special Commission – <ul style="list-style-type: none"> <li>“to facilitate wider acceptance and implementation of the Principles as a basic framework for progress; to consider further elaboration of the Principles; [...]”</li> </ul> | 2011              | 62                |
| 211 | The Special Commission welcomes the designation of new Central Contact Points for International Family Mediation under the Malta Process, and invites States that have not yet done so to consider  | 2017              | 11                |

|     |  |              |          |
|-----|--|--------------|----------|
|     | establishing Central Contact Points (or designating their Central Authority as a Central Contact Point). <sup>10</sup>   |              |          |
| 212 | Structures for cross-border family mediation, including those developed in the framework of the Malta Process, are relevant for cross-border family disputes falling within the scope of the 1980 Convention and the 1996 Convention.  | 2017         | 12       |
| 213 | The Special Commission supports the general continuation of the Malta Process, including the Working Party on Mediation and a possible Fifth Malta Conference, and suggests that continued emphasis be placed on the involvement of government representatives in the Process. | 2012<br>2017 | 86<br>16 |

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<sup>10</sup> The Permanent Bureau intends to insert a footnote with an update in the final version of the Compilation.