

Conclusions and Recommendations (Part II)

adopted by the Special Commission

Recognition and enforcement of agreements

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

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

Direct judicial communications

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

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

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

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

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

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

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

International family relocation

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

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

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

The Malta Process

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

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

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

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

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

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

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

90. The Special Commission takes note of Information Document No 7 on the expansion of INCASTAT and acknowledges that work should continue subject to supplementary funding.

91. The Special Commission welcomes the continuing work on iChild carried out by the Hague Conference and WorldReach Canada.

92. The Special Commission agrees that the Hague Conference will not continue its work on the model consent to travel form (Prel. Doc. No 15) and that the Permanent Bureau should inform ICAO of this decision.