

* **Special Focus** *

Report of Part II of the Sixth Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, 25-31 January 2012

drawn up by the Permanent Bureau

1. Introduction

In preparation for the Sixth Meeting of the Special Commission on the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the 1980 Convention) and the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Convention), it was decided that the subjects to be covered were too extensive for one meeting. The exceptional decision was made for the first time to hold the Special Commission in two separate parts, with the first part taking place from 1 to 10 June 2011 and the second part seven months later from 25 January to 31 January 2012.

Part I of the Special Commission ("the 2011 Special Commission (Part I)") addressed primarily the practical operation of the Conventions, including the activities of Central Authorities, the draft Practical Handbook on the 1996 Convention (Prel. Doc. No 4), judicial communications and networking (Prel. Docs Nos 3 A, 3 B and 3 C), and the draft Guide to Good Practice on Mediation under the 1980 Convention (Prel. Doc. No 5).¹ A report of the 2011 Special Commission (Part I) can be found in Volume XVIII of the Judges' Newsletter.

It was initially decided that Part II of the Special Commission ("the 2012 Special Commission (Part II)") would primarily consider the issue of the desirability and feasibility of a protocol to the 1980 Convention. In anticipation of Part II, the Permanent Bureau circulated in December 2010 to Members of the Hague Conference and Contracting States to the 1980 Convention, a questionnaire on the desirability and feasibility of a protocol to the 1980 Convention ("Questionnaire II",

Prel. Doc. No 2)² inquiring about several potential topics for inclusion in any protocol.

As a result of the discussions that took place during the 2011 Special Commission (Part I), the responses to Questionnaire II³ and consultations with Members, it appeared that it would not be possible to achieve consensus on asking the Council on General Affairs and Policy of the Conference (the "Council") for a mandate to proceed with a protocol to the 1980 Convention. However, there were three areas where there appeared to be substantial support for further work: cross-border recognition and enforcement of mediated agreements; legal basis for cross-border direct judicial communications; and allegations of domestic violence in the context of return proceedings. The agenda for the 2012 Special Commission (Part II) therefore focused on these specific areas of further work in connection with the 1980 and 1996 Conventions, as well as on the matters originally scheduled for discussion at Part II of the meeting: that is, international family relocation (Prel. Doc. No 11), the future of the "Malta Process" and the role of the Hague Conference in monitoring and supporting the 1980 and 1996 Conventions (Prel. Doc. No 12). A Guide to Part II of the Sixth Meeting of the Special Commission (Prel. Doc. No 13)⁴ was prepared and circulated prior to Part II.

The 2012 Special Commission (Part II) took place in The Hague from 25-31 January 2012 and included more than 240 experts and observers from 67 States and 13 organisations. 59 of the States were Contracting States to the 1980 Convention and 32 of the States were Contracting States to the 1996 Convention. Four States were neither Members of the Hague Conference nor Contracting States to either Convention, but were invited to participate in the meeting as observers, namely Iran, Pakistan, Qatar and Saudi Arabia. Representatives from one intergovernmental organisation and 12 non-governmental organisations also participated as observers. Among the participants were 56 judges from 34 States, including 29 members of the International Hague Network of Judges from 23 States. Ten States,⁵ one intergovernmental organisation⁶ and one non-governmental organisation⁷ had not participated in the 2011 Special Commission (Part I).

¹ See also the Report of the 2011 Special Commission (Part I), "Conclusions and Recommendations and Report of Part I of the Sixth Meeting of the Special Commission on the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children", Prel. Doc. No 14 of November 2011 for the attention of the Special Commission of January 2012, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

² "Questionnaire on the desirability and feasibility of a protocol to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction", Prel. Doc. No 2 of December 2010 for the attention of the Special Commission of June 2011, available on the Hague Conference website *ibid*.

³ All responses are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

⁴ "Guide to Part II of the Sixth Meeting of the Special Commission and consideration of the desirability and feasibility of further work in connection with the 1980 and 1996 Conventions", Prel. Doc. No 13 of November 2011 for the attention of the Special Commission of January 2012, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

⁵ This number includes 7 States invited as Members of the Conference and / or Contracting States to the Conventions (Andorra, Bulgaria, Italy, Republic of Moldova, Slovenia, Sri Lanka, and Trinidad and Tobago) and 3 Non-Member States invited as observers (Iran, Pakistan and Qatar).

⁶ The United Nations Children's Fund (UNICEF).

⁷ The Inter-American Bar Association (IABA).

Six Preliminary Documents drawn up by the Permanent Bureau were prepared for the 2012 Special Commission (Part II). Two Information Documents were also made available to participants of the Special Commission. These documents are all available on the Hague Conference website at < www.hcch.net > under “Work in Progress” then “Child Abduction”.

The Permanent Bureau provided an update as to the status of the 1980 and 1996 Conventions. There were two new Contracting States to the 1980 Convention since June 2011,⁸ bringing the total to 87. Since June 2011, the 1996 Convention had entered into force in Denmark, Malta and Portugal, bringing the total to 33 Contracting States, with a further six signatory States (the remaining five European Union Member States and the United States of America).⁹

Experts from Japan and Korea reported on the steps taken with regard to the 1980 Convention in their respective States and the significant progress made towards becoming Contracting States.

2. Cross-Border Recognition and Enforcement of Mediated Agreements

The Permanent Bureau recalled that the Hague Conference had a long history of working in the field of cross-border mediation in family matters. It indicated that the Council on General Affairs and Policy in April 2008 asked the Permanent Bureau, as a first step, to commence work on a Guide to Good Practice on the use of mediation in the context of the 1980 Convention.¹⁰

The Permanent Bureau noted that the discussions of the 2011 Special Commission (Part I) revealed practical challenges concerning the enforceability of mediated agreements. It highlighted that mediation is a tool which may touch upon not only the issue of the return of the child but also other issues such as custody or maintenance. It then explained that these multiple issues could, in turn, cause practical challenges, especially as to questions of jurisdiction of different courts. It stated that although the 1996 Convention, as well as the 2007 Convention, may assist parents in achieving recognition of their agreed upon solution in a cross-border dispute concerning children in all Contracting States, these Conventions may not offer a satisfactory solution where the agreement covers matters which fall outside the scope of one or both Conventions, or when the relevant Conventions are not in force in both countries.

⁸ Guinea and the Russian Federation.

⁹ Greece ratified the 1996 Convention shortly after the 2012 Special Commission (Part II), on 7 February 2012; the 1996 Convention will enter into force for Greece on 1 June 2012. Montenegro also ratified the 1996 Convention shortly after the 2012 Special Commission (Part II), on 14 February 2012. The 1996 Convention will enter into force for Montenegro on 1 January 2013.

¹⁰ See Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (1-3 April 2008), p. 1, 3rd para., available at < www.hcch.net > under “Work in Progress” then “General Affairs”. The Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction Part V – Mediation (hereinafter ‘Guide to Good Practice on Mediation’) is currently being finalised.

The Permanent Bureau underlined that the recognition and enforcement of mediated agreements can be a lengthy, cumbersome and expensive process. It therefore suggested the need to explore the desirability and feasibility of further work in this field and, in particular, in connection with the development of private international law rules.

Finally, the Permanent Bureau indicated that a new free-standing private international law instrument concerning mediated agreements in family law could also assist families more generally with respect to agreements containing a combination of different family law issues in a cross-border situation. The instrument could offer an efficient way to render such agreements binding and enforceable in the different legal systems concerned.

Potential further work on recognition and enforcement of mediated agreements

A large number of experts expressed their support for mediation and for further work on enforcing mediated agreements. Some experts emphasised that mediation does not run counter to the objective of expeditious procedures set out in the 1980 Convention, but on the contrary, provides for the timely resolution of conflicts.

A few experts expressed some reservations regarding the possibility of engaging in further work on recognition and enforcement of mediated agreements. Some experts indicated that the 1996 Convention should be given the opportunity to operate before a decision is taken to determine whether another binding instrument is necessary. States were accordingly encouraged to join the 1996 Convention.

An expert from the United States of America expressed concern that further work on mediation would divert the attention and resources of the Hague Conference away from the original purpose of the 1980 Convention, namely the expeditious return of the child. The Secretary General recalled that mediation covered several family law issues and that it needed to be envisaged in a broader context than the 1980 Convention. He also indicated that the discussions concerned cases where the parties had already achieved an agreement and thus there was no interference with the regular procedure under the 1980 Convention.

In spite of these few reservations, the majority of experts recommended the establishment of an exploratory expert group on mediated agreements. A few experts requested that the Expert Group undertake a preliminary assessment as to the nature and extent of problems in the recognition and enforcement of agreements, including agreements resulting from mediation. It was also suggested that the Expert Group should take into account the framework of the 1980 and the 1996 Conventions as well as the 2007 Convention in order to identify potential gaps and to refer these findings to the Council on General Affairs and Policy.

An expert from the European Union indicated that a global instrument on mediated agreements would have added value for the Member States of the European Union in

their relations with other States. The expert stressed the importance of the implementation of existing measures such as the publication of the draft Guide to Good Practice on Mediation. It was also indicated that an EU Directive (Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters) containing rules on the enforceability of mediated agreements was adopted in 2008.

Several experts agreed that the work of the Expert Group should not only address mediated agreements but should cover all types of agreements obtained through alternative dispute resolution mechanisms. An expert from Canada noted that Preliminary Document No 13 was clear on this point and that this discussion on mediation was taken to include other processes which lead to an amicable resolution of disputes.

Some experts considered that the Expert Group should be composed of experts in private international law to reflect the fact that its work would address legal issues. A few observers emphasised that the Expert Group should also include experts in non-judicial settlements and related issues, in order for the Expert Group to benefit from the broadest expertise possible.

The Special Commission recognised that, in the course of international child disputes, the parties may enter into agreements settling their dispute, and therefore recommended that exploratory work be undertaken to identify legal and practical problems that may exist in the recognition and enforcement of such agreements, taking into account the implementation and use of the 1996 Convention.¹¹ To this end, the Special Commission recommended 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.¹²

3. Direct Judicial Communications (1980 and 1996 Hague Conventions)

The Permanent Bureau introduced the topic by highlighting that, over the last fifteen years, direct judicial communications under the 1980 Convention have developed "organically". The Permanent Bureau recalled that, in June 2011, at the 2011 Special Commission (Part I), the General Principles for Judicial Communications (hereinafter "General Principles")¹³

¹¹ See Conclusion and Recommendation No 76 of the 2012 Special Commission (Part II).

¹² See Conclusion and Recommendation No 77 of the 2012 Special Commission (Part II).

¹³ "Emerging rules regarding the development of the International Hague Network of Judges and draft general principles for judicial communications, including commonly accepted safeguards for direct judicial communications in specific cases, within the context of the International Hague Network of Judges", drawn up by the Permanent Bureau, Prel. Doc. No 3 A of March 2011 for the attention of the Special Commission of June 2011, available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "Child Abduction". During the 2011 Special Commission (Part I), it was decided to change the term "rules" to the term "guidance". The Emerging Guidance and General Principles for Judicial Communications were developed in consultation with a group of experts, the majority of whom were members of the International Hague Network of Judges.

were endorsed.¹⁴ However, the General Principles do not include a legal basis for judges to engage in direct judicial communications. The Permanent Bureau highlighted that, at the 2011 Special Commission (Part I), the delegation from Switzerland submitted Working Document No 4¹⁵ and that this submission was followed by a discussion as to whether there was an interest in developing a legal basis for such communications in a binding instrument.

At the request of experts at the 2011 Special Commission (Part I), the Permanent Bureau prepared an overview of this topic in Preliminary Document No 3 D. The document was developed following an analysis of the information in the Country Profiles and responses to questionnaires. While most States indicated that no legal basis was needed, several States indicated that they needed a legal basis to engage in direct cross-border judicial communications. The Permanent Bureau recalled that a number of States reported having an interest in developing a binding instrument.

The Permanent Bureau outlined four options: (1) a binding international instrument to provide for judicial communications between judges in cases involving international child abduction; (2) a broader binding instrument which contains a basis for judicial communications and other matters concerning the international protection of children; (3) a binding instrument that would cover all legal issues related to communications, as well as the topics in the General Principles; and (4) a legal foundation only within domestic law. The Permanent Bureau recalled that during the 2011 Special Commission (Part I), the experts considered it premature to legislate with respect to the content of the General Principles, preferring to wait to see how these principles are implemented by States and used by judges.

Potential legal instrument providing a basis for the use of direct cross-border judicial communication

Many experts indicated that there was no need for a binding international instrument at this time. An expert from the United States of America stressed that providing a legal basis for direct judicial communications was more properly a

¹⁴ See Conclusion and Recommendation No 68 of the 2011 Special Commission (Part I).

¹⁵ Work. Doc. No 4 provided as follows:

"The Special Commission promotes, without prejudice to more specific principles, further examination of legal rules, in view of a later approval, as follows –

1. Each Contracting State shall designate one or more judges having as task to promote co-operation amongst the competent authorities of that State and to facilitate communications and the exchange of information between these authorities and those of other Contracting States in situations to which the Convention applies.

2. The Central Authority or the judicial authority, seised with the request for return, may, if the situation of the child and the review of the conditions of its return so require, request any authority of another Contracting State which has relevant information to communicate such information.

3. The Central Authority or the judicial authority, seised with the request for return, may in individual cases, if the situation of the child and the review of the conditions of its return so require, take measures for the protection of the child upon its return and enquire in particular about the measures which the competent authorities of the State where the child was habitually resident immediately before its removal or retention can take for the protection of the child upon its return."

matter of domestic law. An expert from the European Union stated that it was premature to discuss binding international rules and that a more flexible approach should be adopted. Some experts noted the difficulty in developing, adopting and effectively implementing a binding international instrument.

On the other hand, an expert from Switzerland stressed the importance of an international legal basis for judicial communications. She suggested the inclusion in a future binding instrument of a provision that would oblige Contracting States to provide for direct judicial communications. Another expert from Switzerland added that a legal basis should address specifically the type of information judges could share and whether judges could discuss the merits of the case. An expert from Germany noted the benefit of a binding international instrument in ensuring international reciprocity, which could not be achieved through domestic law alone.

Many experts expressed support for the International Hague Network of Judges (IHNJ) and emphasised the need to strengthen and expand it. Several experts commented on the challenges posed by the lack of designations of Network Judges by certain States. An expert from the United Kingdom proposed taking more initiatives on a regional basis to encourage the growth of the Network. An expert from Uruguay, supported by experts from several other States, suggested formally recognising the role of the IHNJ as being essential to the effective operation of the 1980 Convention.

Many experts expressed again, as in the 2011 Special Commission (Part I), support for the General Principles, their further development and their prompt dissemination.

Experts from some States indicated that it was desirable to have a legal basis to facilitate the designation of a judge to the IHNJ and to authorise the use of direct judicial communications. An expert from the Republic of Korea noted that the basic characteristics of the role of the IHNJ judge would first need to be determined before any domestic legislation could be introduced.

Some experts advised taking a cautious approach to discussing the development of an international instrument on judicial communications. An expert from Japan indicated that any such discussion should take into account the need to protect judicial discretion. An expert from France highlighted that

judicial practices differ depending on the particular legal system of a country. She noted that in civil law countries the rules of procedure are strict, making direct judicial communications difficult.

Many experts supported the development of soft law tools such as a 'guide to good practice' on direct judicial communications to assist judges. An expert from Israel emphasised that the most important issues to be dealt with were the scope of direct judicial communications and the uniformity of practices, noting that the lack of formalism allowed flexibility. An expert from Brazil suggested the creation of a group of experts composed of judges, Central Authority officials and government officials to develop a guide to good practice.

Observers from NGOs drew attention to other issues. An observer from the United States-Mexico Bar Association (USMBA) underlined that it was important to protect the rights of the parties and that the role of the IHNJ judge should be clearly defined. An observer from the International Association of Women Judges (IAWJ) noted the need to clarify whether justiciable or only non-justiciable issues could be the subject of direct judicial communications. An observer from the Association of International Family Judges (AIFJ) introduced Working Document No 9, explaining that it was drafted in June 2011 and expressed what its members felt were important for the future development of international family law. It was circulated for the information of the other experts, but there was no further discussion.

The Chair concluded the discussion by highlighting that there was no consensus to proceed at this time with the development of an international binding instrument on direct cross-border judicial communications, but that there was support for consideration to be given to the inclusion of a legal basis in the development of any relevant future Hague Convention.¹⁶ There was consensus to promote the use of the Emerging Guidance and General Principles on Judicial Communications; to continue to encourage the strengthening and expansion of the International Hague Network of Judges; and to maintain an inventory of domestic legal bases relating to direct judicial communications.¹⁷

¹⁶ See Conclusion and Recommendation No 78 of the 2012 Special Commission (Part II).

¹⁷ See Conclusion and Recommendation No 79 of the 2012 Special Commission (Part II).



Participants to Part II of the Sixth Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, 27 January 2012

4. Domestic and Family Violence in the context of Return Proceedings and under Article 13(1) b) of the 1980 Convention

The Permanent Bureau recalled that the Conclusions and Recommendations of the 2011 Special Commission (Part I) affirmed support for promoting greater consistency in dealing with domestic and family violence allegations in the application of Article 13(1) b).¹⁸ These Conclusions and Recommendations also indicated that the discussion on three specific proposals concerning future work in this area was to be deferred to Part II.¹⁹ The first proposal was drawn up by certain Latin American States and included, among other items, the drafting of a Guide to Good Practice on the implementation of Article 13(1) b).²⁰ The second proposal, made by Canada,²¹ suggested establishing a working group, with experts drawn in particular from the International Hague Network of Judges, to consider the feasibility of developing an appropriate tool to assist in the consideration of the grave risk of harm exception. A third proposal by the Permanent Bureau suggested that a group of experts, in particular, judges, Central Authorities and experts on the dynamics of domestic and family violence, develop principles or a practice guide on the treatment of domestic and family violence allegations in the context of return proceedings.²²

The Permanent Bureau reported that the responses of States to Questionnaire I²³ revealed that most responding Contracting States dealt with domestic violence allegations in at least a minority of cases under Article 13(1) b). Moreover, in response to Questionnaire II,²⁴ nearly all States indicated that guidance and further training in the application of Article 13(1) b) would be useful, particularly on matters such as safe return. A number of States, however, had indicated opposition to developing binding provisions on this topic in the context of a protocol to the 1980 Convention.

Referring experts to the relevant documentation²⁵, the Permanent Bureau invited the 2012 Special Commission

¹⁸ See Conclusion and Recommendation No 37 of the 2011 Special Commission (Part I).

¹⁹ See Conclusion and Recommendation No 38 of the 2011 Special Commission (Part I).

²⁰ Work. Doc. No 1.

²¹ Work. Doc. No 2.

²² See Prel. Doc. No 9 at para. 151.

²³ "Questionnaire concerning the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children", Prel. Doc. No 1 of November 2010 for the attention of the Special Commission of June 2011, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

²⁴ Prel. Doc. No 2.

²⁵ "Domestic and family violence and the Article 13 'grave risk' exception in the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: A reflection paper", Prel. Doc. No 9 of May 2011 for the attention of the Special Commission of June 2011, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention"; Prel. Doc. No 13 at paras 62 to 69; Work. Docs Nos 1 and 2 and Annexes 2 and 3 to Prel. Doc. No 14.

(Part II) to consider, in connection with further work on this topic, the following issues: (1) The scope of any future work – whether it should be limited to domestic and family violence within the context of Article 13(1) b) or whether it would be beneficial to have a broader consideration of Article 13(1) b); (2) who should be involved in any Working Group and how such a Working Group would be structured; and (3) if tools should be developed, at whom should they be aimed.²⁶

Potential soft law tools promoting a consistent application of Article 13(1) b)

The experts emphasised that further work should be carried out to promote a consistent interpretation of Article 13(1) b). Some experts noted that a consistent application of this exception is important to ensure the safety of the child. An expert from Germany added that the differences in national case law may affect the strategies chosen by taking parents in pleading an Article 13(1) b) defence. Following further discussion, the experts agreed that such work should take the form of a non-binding instrument.

Certain aspects of the project were discussed, particularly the nature of any potential soft-law tool, its objectives, its scope, and the composition of the Working Group.

An expert from Canada suggested that the three proposals deferred for consideration from Part I be 'merged' into one, with the recommendation that a Working Group could be tasked to produce a guide to good practice on the interpretation and application of the Article 13(1) b) exception. She explained that the publication could be a "hybrid" guide, serving multiple users, with a section directed to judges and a separate section directed to Central Authorities.

Many experts expressed their support for the proposal of the Canadian delegation, as amended. However, concerns were expressed by an expert from Switzerland who raised a number of questions on the proposal put forward, such as the scope of such a guide and whether further approval of the completed document by a Special Commission or the Council on General Affairs and Policy would be necessary.

An expert from Canada indicated that the purpose of the guide would be to circumscribe the international implementation and operation of Article 13(1) b) and to examine the place of Article 13(1) b) in the context of the 1980 Convention. She indicated that the guide would also provide guidance to Central Authorities when requests are being considered and allegations of domestic and family violence arise. She noted that it is the usual practice that guides recommended during Special Commissions are reviewed by following Special Commissions and that the Council on General Affairs and Policy is made aware of this work.

An expert from Spain stated that there was nothing new in providing guidance and information to judges on the application of an instrument. In this regard, he noted that, for example, a guide had already been developed within

²⁶ See Prel. Doc. No 13, at para. 69.

the European Union to promote the implementation of the Brussels IIa Regulation. He indicated that a guide to good practice concerning the application of Article 13(1) b) would be very well received by judges of the 27 Member States of the European Union. He underlined that all non-binding measures are welcome.

Many experts expressed their support for this position and insisted on the importance of providing judges with information to help them make a decision, as they ultimately deal with the application and interpretation of Article 13(1) b). Several experts added that it was nevertheless imperative to safeguard the fundamental principle of the independence of judges.

The majority of experts considered that any future work should not be limited to allegations of domestic and family violence within the context of Article 13(1) b), but should include all situations of 'grave risk of harm', such as mental illness, criminal behaviour or drug and alcohol abuse. Several experts explained that limiting the examination of Article 13(1) b) to domestic violence could lead to a different standard being applied to cases where domestic violence is alleged.

An expert from the European Union noted that the European Union was working on the subject of domestic violence. She explained that in 2011, the European Commission brought forward a package of legislative proposals concerning the rights of victims of crime and that one part of these proposals related to the mutual recognition, between Member States, of civil measures providing protection to victims of violence, including domestic violence. However, she indicated that the European Union endorsed the view that domestic violence should not be distinguished from other issues which may arise in the context of an Article 13(1) b) defence.

An expert from Canada recalled a proposal made by Canada in April 2011 to the Council on General Affairs and Policy to undertake preliminary work to consider the possibility of an instrument on the recognition and enforcement of foreign civil protection orders. She noted that the Hague Conference was undertaking this preliminary work and that this might be of use in return cases involving domestic violence.

A few experts indicated that further work on the application of Article 13(1) b) should take into consideration existing tools addressing domestic violence such as the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. An expert from Mexico noted that strengthening these existing tools may avoid risk to the child when the child is ordered to be returned.

Several observers made suggestions as to the content of a guide. A few observers proposed including research on the outcomes for children who have been returned as a result of proceedings brought under the 1980 Convention, particularly those children where a defence has been raised under Article 13(1) b). Reference was made to the work undertaken by ISS in following outcomes for children cared for in kinship placements.

An observer from the International Law Association (ILA) drew the attention of experts to an academic study in the United States of America submitted to the National Institute of Justice²⁷ which noted cases of children being returned to abusers.

An observer from the International Social Service (ISS) indicated that consideration should be given to four areas in drawing up any guide to good practice: (1) the gathering of evidence and how it is to be collected in light of the time constraints which return proceedings involve; (2) how to appropriately analyse the available evidence to ensure consistency; (3) the question of whether appropriate protective measures can be taken in the country to which the return of the child is sought; and (4) the need for authorities in the country to which the child is to be returned to be informed of the future plan for the child so as to ensure the appropriate monitoring of the child upon return. Moreover, the expert stressed that Article 13(1) b) should be applied only when there is objective evidence.

An observer from the United States – Mexico Bar Association (USMBA) disagreed that proof of domestic or family violence under Article 13(1) b) should be limited to 'objective evidence', explaining that the real-life situations of persons implicated sometimes made it very difficult to obtain such evidence. Finally, an observer from the ISFL pointed out various issues which should be explored by the expert group: the determination of the child's State of habitual residence,²⁸ how Central Authorities can ensure the confidentiality of the information they obtain concerning a possible victim of domestic violence, the differences in practices between States concerning, in particular, the definition of domestic violence and finally, the issue of the efficacy of undertakings.

An expert from Canada indicated that the Working Group might include experts from the judiciary and the legal profession, as well as experts in other fields such as on the dynamics of domestic and family violence and mental health. She emphasised that the group should have the expertise necessary to enable it to fulfil its aims. A majority of experts supported this position.

The Chair concluded that there was broad support for work to be undertaken to promote consistency in the application of Article 13(1) b). There was overwhelming support for the proposal by Canada, as amended to take into account the other proposals, to examine the application of Article 13(1) b) through a non-binding guide which would respect the institutional and individual independence of the judiciary and take into account existing legislation on the grave risk exception. This guide would not be limited to cases where allegations of domestic and family violence were raised, but would include the application of Article 13(1) b), and would take into account existing documents and work done on the topic, including that by some observers.

²⁷ Prel. Doc. No 9 at para. 1. This study is summarised in Annex I of Prel. Doc. No 9.

²⁸ She gave the example of one study, cited in Prel. Doc. No 9 (see the study *ibid.*), in which it is indicated that 40% of those who had fled domestic violence stated that they considered their habitual residence to be coerced.

There was broad support for the recommendation to the Council on General Affairs and Policy that it 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.²⁹

The Special Commission noted 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.³⁰

The Special Commission recommended 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.³¹

5. International Family Relocation

The Permanent Bureau began by providing a brief definition of international family relocation that is the long-term move (i.e., a change of habitual residence) to another country by a parent with his or her child. The Permanent Bureau indicated that it was occurring more frequently in the international context as parents moved to follow jobs or relationships or return "home". It noted that the growing trend in many countries towards separated parents having joint parental responsibilities and an active involvement in a child's life even after the dissolution of a relationship, created further concerns when one parent wished to relocate to another country.

The Permanent Bureau then described the manner in which the subject of international family relocation had emerged in the work of the Hague Conference, that is, in relation to transfrontier contact issues. It indicated that two Conclusions and Recommendations of the 2006 Special Commission covered the subject and encouraged "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".³² The Permanent Bureau continued by mentioning the Washington Declaration on International Family Relocation adopted during the International Judicial Conference on Cross-border Family Relocation ("the Washington Declaration") which took place in March 2010 and which was co-organised by the Hague Conference and the International Centre for Missing and Exploited Children (ICMEC).³³ The Permanent Bureau underlined that this 2012 Special Commission (Part II) meeting was one of the first significant discussions on international family relocation in a Special Commission.

The Permanent Bureau further explained that the preliminary research presented in Preliminary Document No 11 showed the diversity of approaches taken by national laws on the issue. The Permanent Bureau outlined that these differences related mainly to three areas: (1) the circumstances in which it may be necessary for a parent to obtain a court order for permission to relocate with a child; (2) the differences between the procedures followed and the factors taken into account by the court seised; and (3) the approach taken by the court to guarantee and secure the contact rights of the remaining parent.³⁴

The Permanent Bureau finally suggested that experts might want to consider the need for further comparative study to be undertaken and whether a working group should be established to consider the possible options for future work.

National approaches to international family relocation

Experts proceeded to offer examples of the various methods of treating international family relocation cases under their relevant domestic law. Several experts indicated that relocation was subject to specific legislation in their domestic law. An expert from the United Kingdom (England and Wales) described the jurisprudential approach adopted in his jurisdiction. An expert from Venezuela explained that the courts seised considered many factors in addition to the best interests of the child. Many other experts stated that their national law did not contain such provisions, as relocation was considered not as an independent issue but as part

²⁹ Conclusion and Recommendation No 82 of the 2012 Special Commission (Part II).

³⁰ Conclusion and Recommendation No 80 of the 2012 Special Commission (Part II).

³¹ Conclusion and Recommendation No 81 of the 2012 Special Commission (Part II). During the adoption of the Conclusions and Recommendations, an expert from Switzerland asked for confirmation that it was the intention of the drafters of the paragraphs related to Article 13(1) b) that the issues to be addressed by a new guide to good practice would have a relatively wide scope, in particular focusing on 13(1) b) issues, but also including safety issues arising under the Convention. The Chair of the Special Commission and the Chair of the Drafting Advisory Committee confirmed that the intention was to recommend the development of a guide to good practice with a comprehensive focus.

³² See "Conclusions and Recommendations of the Fifth Meeting of the Special Commission to review the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the practical implementation of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (30 October – 9 November 2006)" (the "2006 Special Commission"), available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention", Conclusions and Recommendations Nos 1.7.4-1.7.5.

³³ The full text of the declaration is available on the Hague Conference website at < www.hcch.net > under "News & Events" then "2010". The presentations given during the Washington Conference were published in The Judges' Newsletter on International Child Protection, Special Edition No 1, International Judicial Conference on Cross-Border Family Relocation, 23-25 March 2010, Washington, D.C., 2010, available on the Hague Conference website at < www.hcch.net > under "Publications" then "Judges' Newsletter".

³⁴ See in relation to this topic the Transfrontier Contact Concerning Children – General Principles and Guide to Good Practice (Jordan Publishing, 2008), Sections 8.1-8.4, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

of the broader issue of custody. An expert from Germany explained that if the parents shared custody of the child, the judge would deal with the relocation request by granting custody to one parent, in whole or in part.

The experts shared their experiences in connection with this issue, including who would bear the burden of convincing the decision-maker. A few experts explained that under the domestic law, the burden of proof was placed on the relocating parent who must show that the move is in the best interests of the child. The variety of national approaches was exemplified by the intervention of the expert of the United States of America, who explained that there was no consensus among the 50 states within the United States of America on most aspects of relocation cases, including the burden of proof. She underlined that trials were long and very difficult.

Despite these different approaches, the majority of experts stated that their domestic law required the relocating parent to obtain the consent of the other parent or, in the absence thereof, a judicial authorisation, before moving abroad with the child. Many experts explained that this requirement was due to the fact that parental authority was shared by both parents under their national law.

An expert from Israel indicated that the draft legislation which is being introduced in his jurisdiction provided for a preliminary notice of 90 days to be given by the parent wishing to relocate to the other parent. He noted that in case of disagreement, the dispute would be brought to mediation before being heard by a judge.

The majority of experts stated that the “best interests of the child” was the paramount consideration in relocation disputes. In this regard, many experts indicated that judges consider factors such as the desire of the parent to live abroad, the real motives for the move and the soundness of this project, the degree of involvement of each parent in the child's life, the agreements reached previously in relation to custody matters, the possibility for the child to maintain a meaningful relationship with both parents, the protection of the child from physical and emotional harm, and the views of the child. With regard to the last factor, an expert from Belgium indicated that in her jurisdiction, a child under 12 years of age was generally not questioned in order to avoid any conflict of loyalty.

An expert from New Zealand stressed that the broad discretion given to judges in his jurisdiction resulted in very varied outcomes and created legal uncertainty.

Several experts acknowledged that relocation decisions were the most difficult decisions a judge had to make, and that balancing the different interests was difficult. An expert from Belgium added that it was difficult to know how the child would adapt to the new environment and that, in such cases, there was no “good decision”.

A few experts noted recent developments in their national case-law. An expert from the United Kingdom (England and Wales) described the jurisprudential approach adopted in his

jurisdiction where the court generally grants permission to relocate unless it is contrary to the welfare of the child. He explained that there has been recently a significant softening of this traditional approach in order to reflect that in an increasing number of cases, custody of a child is shared. A few other experts described an opposite trend, explaining that since recent jurisprudential shifts, the parent who did not relocate could not easily prevent the other parent from moving.

Some experts noted that the polarisation of the parties made relocation cases difficult to settle through mediation. Other experts disagreed and insisted that mediation should not be excluded from the relocation issue.

An observer from International Parental Child Abduction Support Foundation (IPCAS) noted the abundance of social science research in the area which often reveals the serious consequences of international relocation for families. Various studies were cited, such as the research currently being undertaken by Professor Marilyn Freeman or by Dr Robert George of Oxford University, as well as the preliminary collaborative work currently being undertaken between experts in the United Kingdom and New Zealand.

Potential soft law instrument concerning handling of family relocation cases

The majority of experts did not support the development of a binding instrument on the issue of international family relocation. Many experts underlined that relocation was a matter of substantive domestic law and that a binding instrument would be outside the scope of the work of the Hague Conference.

A few experts added that it would be difficult to find, within the Hague Conference, a common standard of substantive law. An expert from the United Kingdom (England and Wales) affirmed that in reality there was only one principle, that of the best interests of the child, and that all other elements were simply factors to be weighed in the balance to reach a decision as to a particular child. He explained that it was this weighing of factors that would cause difficulties in finding common ground among different States.

Many experts described the Washington Declaration and Preliminary Document No 11 as very valuable sources of insight and guidance into the issue and encouraged their dissemination. A few experts suggested that the Washington Declaration be viewed as a basis for further development into a guide or general principles. An expert from the United Kingdom (England and Wales) emphasised that the Washington Declaration should be regarded as a “first step” rather than a completed exercise.

A few experts suggested that further work could be undertaken by an expert group to determine whether an instrument is necessary in this area but there was not sufficient support for an experts group. An expert from Switzerland underlined that the relocation issue should also be viewed within the context of all other topics under consideration, including

recognition and enforcement of mediated agreements and direct judicial communications.

Many experts underlined that although relocation is a domestic law issue, it has potential private international law implications. It was explained that relocation cases often raise the problem of the recognition and enforcement of contact agreements or decisions. In this respect, several experts recalled the importance of the 1996 Convention which notably provides for the advance recognition of parenting orders (Art. 24). Thus, many experts agreed that the 1996 Convention was the principle solution and supported greater participation in the 1996 Convention. An expert from the European Union added that within the European Union, the Brussels IIa Regulation (Council Regulation (EC) No 2201/2003 of 27 November 2003) provides helpful rules of jurisdiction in international relocation cases.

The Special Commission recognised that the Washington Declaration provides a valuable basis for further work and reflection.³⁵ Moreover, the Special Commission noted support for further comparative study being undertaken of the different approaches adopted in various legal systems to international family relocation in relation to private international law issues.³⁶ Finally, the Special Commission recognised the use of the 1996 Convention in international family relocation, and encouraged States that have not yet done so to consider ratification of, or accession to, the Convention.³⁷

6. Future of the Malta Process

The Permanent Bureau introduced the topic by recalling the history of the Malta Process as outlined in various Preliminary Documents prepared by it and the declarations issued by the three previous Malta Conferences.³⁸ It also acknowledged the activities of the Working Party on Mediation in the context of the Malta Process and welcomed its 'Principles for the establishment of mediation structures in the context of the Malta Process'.³⁹

The Permanent Bureau noted some desire to explore whether the initial "building blocks" in place to develop a "rule of law" between States could be further enlarged and developed outside of the context of mediation structures. There were different views on how to approach this: to create smaller

³⁵ Conclusion and Recommendation No 83 of the 2012 Special Commission (Part II).

³⁶ Conclusion and Recommendation No 84 of the 2012 Special Commission (Part II).

³⁷ Conclusion and Recommendation No 85 of the 2012 Special Commission (Part II).

³⁸ Such topic was briefly reviewed in Part I of the Sixth Meeting of the Special Commission. See: Prel. Doc. No 14 at paras 259-269. See also Prel. Doc. No 13 at paras 77-81; Prel. Doc. No 12 at paras 88-96; "Regional Developments", Prel. Doc. No 10 of October 2006, pp. 7-9; Info. Doc. No 8, pp. 1-14. All of these documents are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

³⁹ "The 'Principles for the establishment of mediation structures in the context of the Malta Process' and the accompanying Explanatory Memorandum", Prel. Doc. No 6 of May 2011, available on the Hague Conference website *ibid*, pp. 1-13. See also Conclusion and Recommendation No 60 of the 2011 Special Commission (Part I).

regional groups, to involve more non-Contracting States, to conduct projects relating to questions of jurisdiction and to examine other governmental structures. In this context, the Permanent Bureau sought input from States on how to move forward,⁴⁰ taking into account the value of the three declarations issued by the previous conferences in Malta and the possibility of supporting a Fourth Conference, to be held in late 2012 or early 2013.

The expert from Malta outlined the rapid progress and increasing number of States and institutions involved in the Malta Process and indicated that it would welcome holding a fourth Conference in Malta. Several experts and observers recognised the work done by the Working Party on mediation and welcomed a continued dialogue on the matter.

Several experts believed that the work to be undertaken should be more focused on assistance to particular States to address the problems between non-Contracting States to the Conventions and Contracting States. To this end, experts emphasised the need for concrete results and more commitment on the part of governmental entities, not just the judiciary. A number of other experts proposed the designation of Central Contact Points, including their extension to States not yet involved. Finally, a great number of experts supported the organisation of a Fourth Malta Conference.

The Special Commission agreed to support the continuation of the Malta Process, and encouraged greater involvement of government representatives in the Process.⁴¹

7. Report on the Services and Strategies provided by the Hague Conference in relation to the 1980 and 1996 Conventions

The Permanent Bureau introduced Preliminary Document No 12 which offered an overview of the services and strategies provided by the Hague Conference to support the practical operation of the 1980 and 1996 Conventions.⁴² It noted that some of these services had already been discussed during the 2011 Special Commission (Part I)⁴³ and briefly recalled the Conclusions and Recommendations reached at that meeting.⁴⁴ It then turned to the services which were not directly addressed during the 2011 Special Commission (Part I), namely the organisation of Special Commission meetings, conferences, seminars and trainings, responding to requests for assistance, INCADAT, INCASTAT, iChild and a new question concerning the role of the Permanent

⁴⁰ See Prel. Doc. No 12 of December 2011 at paras 105-108.

⁴¹ Conclusion and Recommendation No 86 of the 2012 Special Commission (Part II).

⁴² This document summarised the comments about services received from States in response to Prel. Docs Nos 1 and 2 (Questionnaires I and II). See also Prel. Doc. No 13, paras 82-87.

⁴³ See Prel. Doc. No 14 in the following areas: developing guides to good practice (paras 165-168), developing handbooks and implementation checklists (paras 169-176), maintaining country profiles for the 1980 Convention (paras 30-32), developing and updating standard forms (paras 26-29) and facilitating and supporting direct judicial communications (paras 196-215).

⁴⁴ Conclusions and Recommendations Nos 10, 14, 19, 21-27, 38(a) and (c), 40, 52-55, 58-59, 66, 68 and 72 of the 2011 Special Commission (Part I).

Bureau in monitoring and ensuring compliance with the 1980 and 1996 Conventions. It invited experts to give their views particularly on the latter question, bearing in mind the financial constraints and limited resources available.

Many experts expressed their general appreciation for the work of the Permanent Bureau, particularly in relation to the encouragement of co-operation between States and the promotion of accessions to the 1980 and 1996 Conventions.

A significant number of experts supported the post-Convention services provided by the Hague Conference, which aim to promote the effective implementation and practical operation of the 1980 and 1996 Conventions. Experts emphasised the importance of the Permanent Bureau's work in organising seminars, meetings, conferences and trainings at a national, regional and global level, especially between the judiciary. Several experts also expressed appreciation for the maintenance of the Hague Conference's website and the databases of INCADAT and INCASTAT. One expert commented that the completed Country Profiles for the 1980 Convention are very useful tools.

Various experts thanked and encouraged the continued work of the Latin American Regional Office. Other experts welcomed the establishment of an Asia Pacific Regional Office in the Hong Kong Special Administrative Region of the People's Republic of China.

In relation to the idea of the Permanent Bureau taking a stronger role in monitoring compliance with the Conventions, several experts expressed their reservations regarding the idea, which they feared would have an impact on the traditional, neutral position of the Permanent Bureau.

Consideration was also given to the role of the Permanent Bureau in responding to requests from governments, Central Authorities, lawyers and individuals. Some experts indicated that the Permanent Bureau should not deal with requests from individuals and should only respond to Central Authority requests. The Permanent Bureau reminded experts that the responses to requests from individuals represent only a portion of its work and that it generally refers individuals to the relevant Central Authorities (or other competent authority, in the case of non-Contracting States). It also mentioned that it is working on a Frequently Asked Questions (FAQ) section on its official website to attempt to reduce the number of requests for information received from individuals.

Various experts noted that given the limited nature of available resources, the Permanent Bureau should prioritise its services.

The Special Commission recommended that the Permanent Bureau continue its work in supporting the effective practical operation of the 1980 and 1996 Conventions. In particular, it was recommended that the Permanent Bureau should encourage regional activities, including conferences, seminars and trainings, where requests for assistance are received from individuals, provide general information concerning

the relevant competent authority(ies), and consider ways to enhance the effectiveness of Special Commission meetings to review the practical operation of the 1980 and 1996 Conventions.⁴⁵ It further supported the continued work of the Latin American Regional Office and the development of a Regional Office in the Asia Pacific region.⁴⁶

INCADAT (The "International Child Abduction Database")

The Permanent Bureau recalled the Conclusions and Recommendations of the 2006 and 2011 (Part I) Special Commissions⁴⁷ where the Special Commission had welcomed the efforts of the Permanent Bureau in relation to the use and the development of information technology systems in support of existing and draft Hague Conventions in the areas of legal co-operation and family law. These Conclusions and Recommendations encouraged Member States to collaborate actively with the Permanent Bureau in the development and maintenance of these systems and to explore possible sources of funding. The Permanent Bureau thanked the many States which had supported these efforts by contributing to the Conference's supplementary budget, as well as the other partners for their contributions.

The Permanent Bureau briefly summarised the history of INCADAT which was established in 1999 in order to provide accessibility for all Convention actors and users to leading decisions rendered by national courts in respect of the 1980 Convention. It noted that INCADAT currently contains summaries of more than 1000 decisions from more than 40 jurisdictions in English and French and, to a large extent, in Spanish. It further indicated that in April 2010, a new version of INCADAT was launched introducing, amongst other new features, a "Case Law Analysis" section regarding key topics of the 1980 Convention.

The Permanent Bureau stated that it was working on the enlargement of INCADAT's coverage and, in this respect, would like to increase the number of leading decisions from already represented States, as well as to extend the database to include case law from not yet represented Contracting States. It also noted the importance of building and servicing a stable and reliable network of INCADAT "Correspondents" (i.e., suitably qualified persons around the globe who could contribute case summaries to INCADAT) and the need to hold an INCADAT Correspondents meeting in The Hague. The Permanent Bureau highlighted that all these initiatives involve an allocation of resources which is increasingly difficult within the Permanent Bureau.

The Permanent Bureau noted that the overwhelming majority of responses to Questionnaire I⁴⁸ indicated

⁴⁵ See Conclusion and Recommendation No 87 of the 2012 Special Commission (Part II).

⁴⁶ See Conclusion and Recommendation No 88 of the 2012 Special Commission (Part II).

⁴⁷ See Conclusion and Recommendation No 1.1.16 of the 2006 Special Commission and Conclusion and Recommendation No 56 of the 2011 Special Commission (Part I).

⁴⁸ See Prel. Doc. No 12 at para. 46.

that INCADAT was a very helpful resource and stated that it was particularly valuable for judges and lawyers in practice. It reminded experts that INCADAT could never be an exhaustive resource on case-law under the 1980 Convention. It underlined that the database was a resource offered to all, for free, and that comparisons with commercial databases were therefore unrealistic, bearing in mind the huge resources such databases have at their disposal.

An expert from Switzerland highlighted the importance of having accurate information placed online, so as to provide a reliable tool. An expert from Germany encouraged quicker uploading of decisions suggested by States to INCADAT's editorial team. Other experts noted that INCADAT illustrated that States still had fundamental differences in interpreting and implementing the 1980 Convention and emphasised the importance of INCADAT for achieving the uniform interpretation and application of the 1980 Convention. An expert from the United Kingdom highlighted its benefits, practical effectiveness and further commended the work of the INCADAT Legal Consultant, Professor McElevay.

Many experts highlighted the usefulness of INCADAT and expressed their support for its maintenance. An expert from the United States of America supported the recommendation from the 2011 Special Commission (Part I) concerning exploring the possible extension of INCADAT to 1996 Convention cases.⁴⁹ However, an expert from Germany disagreed on the latter proposal, due to financial constraints and the increased difficulty of the subject matter. Various experts expressed the need for a greater allocation of resources to the database.

⁴⁹ See Conclusion and Recommendation No 56 of the 2011 Special Commission (Part I).

The Permanent Bureau invited Professor Peter McElevay, INCADAT Legal Consultant, to discuss the revisions and additions made to INCADAT, the new version of which was launched in April 2010. He began his report by reminding experts that the core objective of INCADAT was to make available the case law of as many jurisdictions as possible, in order to promote the uniform interpretation and application of the 1980 Convention. He stressed that INCADAT cannot guarantee a uniform interpretation of the Convention: that is a matter for the courts themselves. INCADAT simply makes the information available. He explained that decisions of particular importance were included and that these were neutrally selected. He highlighted that INCADAT was a free service which could not provide the same level of sophistication offered by commercial databases. He indicated that the summaries annexed to the decisions only presented the facts, the outcome and the reasoning of the courts in a concise, carefully examined and neutral manner. He added that the name of the summary's author was supplied and that a link to the text of the original decision was included wherever possible.

He noted that so far efforts to recruit correspondents had not generated a significant contribution of summaries. He encouraged greater cooperation in this matter. He noted the future launching of an online module that would facilitate the transfer of decisions from correspondents to the editorial team. He also indicated that a new edition of the Correspondents' Guide would soon be available. He then referred to the new feature of the "Case Law Analysis" section of the database. Finally, he stressed that despite very limited resources, INCADAT was a tool of high quality.

The Special Commission took note of Professor McElevay's report on INCADAT which stressed that future improvements to INCADAT are subject to available resources.⁵⁰

⁵⁰ See Conclusion and Recommendation No 89 of the 2012 Special Commission (Part II).



Group picture taken in front of the Peace Palace of participants to Part II of the Sixth Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, 27 January 2012

8. Conclusions and Recommendations

Adopted by the Sixth Meeting of the Special Commission (Part II)

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:
- promote the use of the Emerging Guidance and General Principles on Judicial Communications;
 - continue to encourage the strengthening and expansion of the International Hague Network of Judges; and
 - 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 Declaration⁵¹ 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:
- focus on the promotion, implementation and effective practical operation of the 1980 and 1996 Conventions;
 - encourage regional activities including conferences, seminars and training;
 - where requests for assistance are received from individuals, provide general information concerning the relevant competent authority(ies); and
 - consider ways to enhance further the effectiveness of Special Commission meetings to review the practical operation of the 1980 and 1996 Conventions.

⁵¹ 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.

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 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.
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.