

**TRANSFERT DE FONDS ET UTILISATION DES TECHNOLOGIES DE L'INFORMATION DANS LE
CADRE DU RECOUVREMENT INTERNATIONAL DES ALIMENTS ENVERS LES ENFANTS
ET D'AUTRES MEMBRES DE LA FAMILLE**

Rapport établi par Philippe Lortie, Premier secrétaire

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**TRANSFER OF FUNDS AND THE USE OF INFORMATION TECHNOLOGY IN RELATION TO
THE INTERNATIONAL RECOVERY OF CHILD SUPPORT
AND OTHER FORMS OF FAMILY MAINTENANCE**

Report drawn up by Philippe Lortie, First Secretary

*Document préliminaire No 9 de mai 2004
à l'intention de la Commission spéciale de juin 2004
sur le recouvrement international des aliments envers les enfants et d'autres membres de la famille*

*Preliminary Document No 9 of May 2004
for the attention of the Special Commission of June 2004
on the international recovery of child support and other forms of family maintenance*

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CHAPTER I INTRODUCTION*

1. During the Special Commission of May 2003 on the International Recovery of Child Support and other Forms of Family Maintenance, the Permanent Bureau of the Hague Conference announced that it would continue its study of the electronic transfer of funds and the use of information technology with respect to the international recovery of maintenance in coordination with the experts and also with central banks and international organisations involved in this area.¹ The objective of this study is to gather information to provide an overview of existing systems for the electronic transfer of funds and electronic communications. This information will assist the work of the Special Commission and future co-operation in relation to building and securing effective implementation of the new instrument.² In conducting its work the Special Commission is following a recommendation originally adopted by the Special Commission of the Hague Conference of April 1999 on the review of the operation of the Hague Conventions concerning Maintenance Obligations and the New York Convention on the Recovery Abroad of Maintenance. This recommendation reads as follows:

The new instrument should:

*"take account of future needs, the developments occurring in national and international systems of maintenance recovery and the opportunities provided by advances in information technology."*³

2. The Working Draft of a Convention on the International Recovery of Child Support and other Forms of Family Maintenance includes in its preamble, a proposal which reads:

*"Seeking to take advantage of recent advances in technology and to create a flexible and efficient system, which can continue to evolve as needs change and further advances in information technology create new opportunities."*⁴

3. In order to gather relevant information in relation to electronic transfer of funds and the use of information technology, the Permanent Bureau devised a Questionnaire entitled "Additional Questionnaire concerning a New Global Instrument on the International Recovery of Child Support and other Forms of Family Maintenance", drawn up by Philippe Lortie, First Secretary.⁵ This Questionnaire develops further the "Information Note and Questionnaire concerning a New Global Instrument on the International Recovery of Child Support and Other Forms of Family Maintenance", drawn

* The author would like to thank Véronique Goyette from Canada, articling student at the Permanent Bureau (February-July 2003), and Kim Talus from Finland, intern at the Permanent Bureau (February-April 2004), for their research assistance with regard to the preparation of this Report.

¹ See Prel. Doc. No 5 of October 2003, Report on the First Meeting of the Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance (5-16 May 2003), drawn up by the Permanent Bureau, for the attention of the Special Commission of June 2004 on the International Recovery of Child Support and other Forms of Family Maintenance, paragraphs 35 and 51, available at < <http://hcch.net> > under "Work in Progress".

² It was noted, in this respect, that it would be interesting to know from the experts the total number and amounts of the transfers involved in maintenance cases in order to convince the banks to work on this issue (see Prel. Doc. No 5, paragraph 51).

³ See "Report on and Conclusions of the Special Commission on Maintenance Obligations of April 1999", paragraph 46, drawn up by the Permanent Bureau in December 1999, available at < <http://hcch.net> > under "Work in Progress".

⁴ See Prel. Doc. No 7 of April 2004, Working Draft of a Convention on the International Recovery of Child Support and other Forms of Family Maintenance, prepared by the Drafting Committee which met at The Hague from 12-16 January 2004, for the attention of the Special Commission of June 2004 on the International Recovery of Child Support and other Forms of Family Maintenance (the "Working Draft"), available at < <http://hcch.net> > under "Work in Progress".

⁵ See Prel. Doc. No 6 of February 2004 "Additional Questionnaire concerning a New Global Instrument on the International Recovery of Child Support and other Forms of Family Maintenance", draw up by Philippe Lortie, First Secretary, for the attention of the Special Commission of June 2004 on the International Recovery of Child Support and other Forms of Family Maintenance, available at < <http://hcch.net> > under "Work in Progress".

up by William Duncan, Deputy Secretary General.⁶ The Additional Questionnaire was addressed to all Member States of the Hague Conference, to States Parties to the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance and to other States invited to the June 2004 Special Commission. Responses were also sought from relevant international governmental and non-governmental organisations.⁷

4. The Questionnaire is divided into three parts that concern, first, collection and transfer arrangements,⁸ second, statistics concerning the cross-border transfer of funds, and third, the use of information technology.

5. This Report, which draws in part from the answers to the Questionnaires of 2002⁹ and 2004,¹⁰ deals with international electronic transfer of funds (Chapter II), the use of electronic communications (Chapter III) and other usage of information technology to assist Central Authorities in performing their functions such as Internet sites to collect and disseminate information, databases and case management systems (Chapter IV).

⁶ See Prel. Doc. No 1 of June 2002, Information Note and Questionnaire concerning a New Global Instrument on the International Recovery of Child Support and Other Forms of Family Maintenance, drawn up by William Duncan, Deputy Secretary General, for the attention of the Special Commission of May 2003 on the International Recovery of Child Support and other Forms of Family Maintenance, available at < <http://hcch.net> > under "Work in Progress".

⁷ On 21 May 2003, the following States had responded to the Additional Questionnaire: Australia, Austria, Canada, Costa Rica, Czech Republic, Denmark, Finland, Germany, Japan, Luxembourg, Mexico, Morocco, Netherlands, New Zealand, Norway, Philippines, Portugal, Serbia Montenegro, Slovakia, Slovenia, Sweden, Switzerland and the United Kingdom (England & Wales).

⁸ A repetition of Questions 25, 26, 29 and 30 of Prel. Doc. No 1.

⁹ Prel. Doc. No 1.

¹⁰ Prel. Doc. No 6.

CHAPTER II INTERNATIONAL ELECTRONIC TRANSFER OF FUNDS

6. The issue of electronic transfer of funds in relation to the recovery of maintenance payments was discussed both in relation to speed and costs during the May 2003 Special Commission Meeting. A preliminary Information Document¹¹ was circulated during the meeting. Since the May Special Commission met, a provision on the international transfer of funds has been incorporated in the Working Draft. Such a provision could allow the conclusion of bilateral or regional arrangements that may be necessary to implement such systems.¹² Article 24 of the Working Draft provides that:

1. *States are encouraged to promote, including by means of bilateral or regional agreements, the use of the most cost-effective and efficient methods available to transfer funds payable as maintenance.*¹³

2. *A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable as maintenance or to cover costs and expenses in respect of any claim under this Convention.*¹⁴

7. In addition, specific functions vested in Central Authorities in relation to the transfer of funds have been included in the Working Draft. Central Authorities shall take all appropriate measures to: (a) encourage voluntary payment of maintenance obligations;¹⁵ (b) [facilitate the ongoing enforcement of maintenance decisions, including the monitoring of payments];¹⁶ and, (c) facilitate the expeditious transfer of maintenance payments to the creditor.¹⁷

A) *Responses to the 2002 Questionnaire and the 2004 Additional Questionnaire*¹⁸

a) Importance attached to co-operation on transfer of funds - Responses to Questions 33 (h) & 34 of the 2002 Questionnaire

8. Out of the 31 jurisdictions that have answered Question 33 with respect to letter (h) – “What degree of importance do you attach to the provisions concerning co-operation in the international transfer of funds at low costs?” – twenty-one jurisdictions have indicated that this is a priority. Out of these twenty-one jurisdictions: six were of the view that it is very important; twelve answered that it is important / desirable; and three indicated that it is interesting. Furthermore, six jurisdictions did not express any views and four jurisdictions have indicated that this is not a priority. With regard to Question 34 of the 2002 Questionnaire, which requested the States to rank the elements

¹¹ This Information Document is set out in Appendix 3 to Prel. Doc. No 5 and in Appendix to Prel. Doc. No 6.

¹² Prel. Doc. No 5, paragraph 49.

¹³ During the May 2003 Special Commission, it was suggested that the new instrument include a general provision similar to Article 20 of the *Inter-American / Montevideo Convention of 15 July 1989 on Support Obligations* which provides that “[t]he States Parties undertake to facilitate the transfer of funds required for compliance with this Convention” (see Prel. Doc. No 5, paragraph 49).

¹⁴ This wording is taken from Article 22 of the *Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations*.

¹⁵ Prel. Doc. No 7, Article 8(f) of the Working Draft.

¹⁶ *Ibid.*, Article 8(g) of the Working Draft. The square brackets indicate that this matter has not yet been fully considered by the Special Commission.

¹⁷ *Ibid.*, Article 8(h) of the Working Draft.

¹⁸ Responses to the Questionnaires are available at < <http://hcch.net> > under “Work in Progress”.

listed in Question 33, out of the thirty-one jurisdictions that have answered the Questionnaire: five view this as a core element; sixteen think that this is an optional element; and ten have no views on this point.

b) Responses to the Additional Questionnaire of 2004

9. The responses to the Additional Questionnaire show that less than half of the respondents keep statistics of their cases.¹⁹ The value of statistics is not to be underestimated. In addition to providing performance measurements, statistics can help the strategic decision-making process in relation to the implementation of information technologies. The cost associated with those technologies will be more acceptable where there is a favourable cost-benefit ratio. As this Report will show, in most cases the implementation of information technology is limited to bilateral schemes since the technical and legal requirements surrounding their use vary from one State to another. Thus, at first it will be more realistic to implement information technologies in partnership with States with which there is a high volume of cases. Furthermore, banks will offer better rates for larger volumes of transactions than for smaller.²⁰ The responses to the Additional Questionnaire show that the typical frequency of payment is in most cases on a monthly basis.²¹ Furthermore, responses show that the costs of electronic transfers are decreasing; this is certainly true for Europe where new norms have been implemented to that effect.²² Paper checks usually cost at least twice the amount of electronic transfers. Outside the Euro zone the fee per check varies between 5 and 40 Euros where the fee per electronic transfer varies between 3.5 and 20 Euros.²³ It is important to note that for most types of transfers both receiving and transmitting banks impose transaction fees especially in the case of paper checks.

B) *Examples of different methods to transfer funds already used by Central Authorities*

a) Co-operation with other national Agencies or Departments

10. In their responses to the Additional Questionnaire both Norway and Sweden have indicated that they transfer funds abroad through their Social Insurance Offices. The possibility of combining the social insurance and the maintenance payments network should be encouraged as they both entail similar types of payments and monitoring.

b) Transfers in bulk

11. As was observed during the May 2003 Special Commission, payments taken individually are often so small that it is sometimes necessary to group them together in order to diminish the transfer costs.²⁴ Australia offers one example of bulk payments. Once a month the Australian Child Support Authority sends maintenance payments to the New Zealand Inland Revenue Department for distribution purposes. At the same time,

¹⁹ Australia, Austria, Canada (not all jurisdictions), Costa Rica, Czech Republic, Finland, Morocco, Netherlands, Serbia and Montenegro, Sweden and the United Kingdom (England & Wales) keep statistics. Germany, Japan, Luxembourg, Mexico, Norway, Philippines, Portugal, Slovakia, Slovenia and Switzerland do not maintain statistics.

²⁰ The smallest amount of maintenance for one individual case for one year reported by the States in their response to the Additional Questionnaire was 4.8 Euros where the maximum was 110,285 Euros. The average amount of maintenance for one individual for one year was between 1,200 Euros (Slovakia and Slovenia) and 2,600 Euros (Sweden) with the exception of Norway (7,200 Euros).

²¹ As a rule the Czech Republic collects and pays every two months.

²² *Infra*, paragraphs 21-22.

²³ It is to be noted that Slovakia proceeds postal orders for the amount of 240 Euros at a cost of 0.70 Euro.

²⁴ Prel. Doc. No 5, paragraph 50.

Australian Child Support Authority sends separately by electronic means an excel spreadsheet to the Inland Revenue Department of New Zealand indicating the break-up of the payments for the creditors and converting the amounts to New Zealand currency.

C) *Examples of different methods to transfer funds potentially available to both Central Authorities and private persons*²⁵

a) Inter-branch transfers

12. Inter-branch transfers between branches located in different States can be operated through a multinational bank. In this regard, the creditor should choose a bank that has branches in both the State of the debtor and in her / his own State. Once a bank is selected, the debtor on his / her own or subject to a decision of an authority will open a bank account in a branch of that bank located in his / her State. The multinational bank may have means available to it to facilitate the international transfer of funds at low costs without depending on the settlement systems of third parties. The two bank accounts can be in the same currency or in different currencies. A Central Authority could operate transfers in the same fashion by opening bank accounts abroad with multinational banks. This is how the Social Insurance Offices of Norway and Sweden operate. Although often not free of charge but certainly not expensive, these inter-branch transfers appear to offer an efficient and practical solution.

b) Credit Unions

13. Similar to banks, credit unions such as Western Union²⁶ and MoneyGram²⁷ transfer funds abroad. The advantage of using credit unions is that they usually have a better geographical coverage in comparison to banks and that they handle transfers very quickly. However, they usually charge high fees for their services. It is worth noting that it is through this medium that many migrants from developing and under-developed States transfer funds to left behind families. In 2002, these transfers accounted for more than 80 billion dollars.²⁸

c) The International Remittance Network²⁹

14. The International Remittance Network (IRnet) offers an electronic fund-transfer service linking credit unions cooperatives with Citibank in the United States. Credit union members, such as unionized agricultural workers, who have emigrated to the United States can transfer funds to local Citibank branches in El Salvador, Guatemala and Mexico for less than 5 Euros per transaction.

²⁵ Specific electronic transfer of funds systems outside the banking or credit systems are not presented in detail in this Report because they may not meet governmental or departmental agencies financial standards. Furthermore, in most cases, their geographical scope is limited. Additional information on ebay & PayPal and Contopronto can be found on the following websites < <http://www.ebay.com> >, < <http://www.paypal.com> >, and < <http://www.contopronto.com> >.

²⁶ < <http://www.westernunion.com> >.

²⁷ < <http://www.moneygram.com> >.

²⁸ Devesh Kapur and John McHale, "Migration's New Payoff", in *Globalisation at Work*, November-December 2003, p. 47-59. The World Bank is examining the issue of low-cost transfers in respect of these transfers as they constitute one of the biggest source of development for these countries.

²⁹ < http://www.woccu.org/prod_serv/irnet/index.php >.

- d) ATM Cards (Maestro (Europay-Mastercard), Cirrus (United States, Canada), etc.)³⁰

15. Nowadays, in the light of the liberalisation of foreign investments through the web of Bilateral Investment Treaties (BITs) or what other States call Foreign Investment Protection and Promotion Agreements (FIPAs), it is now possible, in a number of cases, for non-residents to open bank accounts in foreign States. On that basis, a creditor could open a bank account either on her / his own or through a Central Authority (if the bank laws allow for such a possibility) in the State of the debtor. Therefore, funds from the debtor's bank account could be transferred locally at a low cost to the creditor's bank account allowing the creditor from abroad to then access the funds through an Automatic Teller Machine (ATM). In this case, the ATM will automatically make the conversion for the foreign exchange at low costs. One inconvenience of this system is that if the creditor loses the card it will be difficult to get a new card from abroad. However, this could be resolved quickly if the foreign bank offers Internet-banking solutions. In that respect, it will be easy to order a new card and, in the interim, if available, it will be possible for the creditor to order, online, electronic transfer of funds to the local bank account, usually at a very low cost.

- e) The Mobile Payment Forum³¹

16. Visa has founded, together with American Express, MasterCard and JCB, the Mobile Payment Forum, a non-profit cross-industry organisation launched in November 2001 with the aim of creating a framework for standardised, secure and authenticated mobile payments, based on payment card accounts. Debtors or Central Authorities could transfer funds to a credit card the same way they transfer funds to a bank account.

D) International settlement systems – Automated clearing house systems

17. Transfer of funds can be done either by collection (debit transfers) or by payment (credit transfers). The former uses bank checks that are usually longer to process where the latter uses telex or computer-to-computer software. Checks are transmitted by mail or other means outside banking channels to the beneficiary of the fund transfer. Then, it is for the beneficiary of the fund transfer to initiate the banking procedures to collect the funds provided for in the check. This is why this procedure is called a "debit transfer". Collections of bills of exchange or promissory notes are also debit transfers.³²

³⁰ During the 1999 Special Commission an expert presented this method in relation to a domestic situation; it could certainly be implemented at the international level.

³¹ < <http://www.mobilepaymentforum.org> >.

³² See UNCITRAL, "Explanatory note on the UNCITRAL Model Law on International Credit Transfers", United Nations, New York, 1994, paragraphs 5-6, available at < <http://www.uncitral.org> >.

18. In telex and computer-to-computer transfers it is the originator of the funds transfer who begins the banking procedures by issuing a payment order to its bank to debit its account and to credit the account of the beneficiary. A funds transfer in which the originator of the funds transfer initiates the banking procedures is often referred to as a "credit transfer".³³

*"The collection of banks checks, telex transfers and the newer computer-to-computer transfers have one element in common: value is transferred from the originator to the beneficiary by a debit to the bank account of the originator and a credit to the bank account of the beneficiary. Settlement between the banks is also accomplished by debits and credits to appropriate accounts. Those accounts may be maintained between the banks concerned or with third banks, including the central bank of one or both countries. In the case of computer-to-computer transfers the settlement is automated."*³⁴

19. This may explain why the collection of bank checks is slower, more expensive and subject to errors. However, one difficulty arises from the use of electronic transfers. During discussions with the United States Federal Reserve experts it was pointed out that in most cases there is not enough space on the electronic fund transfer (EFT) order / instructions to include all the case specific information for monitoring purposes. As many authorities monitor maintenance payments for enforcement purposes, it is important for them to have the necessary tools to track the actual payments. Thus, their preference is to include this information in the EFT order / instructions. However, it is felt that supplementing the order with an additional cross-referenced data message including this information could alleviate this difficulty. This is a method used by Australia with regard to its bulk payments to New Zealand. It would even be easier to use this method for individual payments.

- a) Work carried-out by the United Nations Commission on International Trade Law (UNCITRAL)

20. In 1992, UNCITRAL adopted the Model Law on International Credit Transfers.³⁵ At the time, the Model Law was prepared in response to a major change in the means by which funds transfers are made internationally (*i.e.* credit-based transfers using computer-to-computer technology). The Model Law is an essential component of international settlement and automated clearing-house systems. In January 1997, the European Parliament and the Council adopted the Directive (EC) No 97/5 on cross-border credit transfers which is in great part inspired by the UNCITRAL Model Law.³⁶ It served as the foundation to the recent Regulation on cross-border payments in Euro.³⁷

³³ *Ibid.*

³⁴ *Ibid.*, paragraph 4.

³⁵ Member States of the European Union have implemented the Model Law, see following footnote.

³⁶ Directive (EC) No 97/5 of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers, O.J. L 043, 14/02/1997, p. 0025-0030. Additional information on this Directive can be found at < http://europa.eu.int/comm/internal_market/payments/docs/framework/retailpay-com-contrib/bundeskammer-fur-arbeiter_en.pdf >.

³⁷ See Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in Euro.

b) Work within the European Union (EU)

21. Since 1 July 2003, charges for cross-border payments or credit transfers within the EU up to 12,500 Euros are the same as the charges levied by the same institution in respect of corresponding transfers within the Member State in which the institution is located.³⁸

22. In the footsteps of Regulation No 2560/2001, the European banks have created a pan-European Automated Clearing House (ACH) system called STEP2 for processing bulk payments at low costs. STEP2 is a central infrastructure for the routing of payment instructions that enables banks to reduce costs related to processing of customer payments. It processes payment orders sent to the system by means of data message through a secure network. Currently STEP2 offers payments distribution to most of the EU countries.³⁹ The participation in the STEP2 system is presently restricted to banks operating in the EU.

c) SWIFT⁴⁰

23. SWIFT stands for the Society for Worldwide Inter-bank Financial Telecommunications. SWIFT is a co-operative organisation created and owned by banks which operates a network to facilitate the exchange of payment and other financial messages between financial institutions throughout the world. SWIFT provides a secure messaging service for inter-bank communication. A SWIFT payment message is an instruction to transfer funds; the exchange of funds (i.e. settlement) subsequently takes place via a payment system or through correspondent banking relationships. Its services are extensively used in the foreign exchange, money and securities markets for confirmation and payment messages. The advantages of SWIFT are that it is broadly available and it is possible to transfer any amount whether for commercial or private purposes. During the past year, fees for SWIFT transfers have declined. This is probably resulting from the increased competition and new information technologies.

d) Automated clearing house system (FedACH)⁴¹

24. At this point the FedACH system works northbound between the United States and Canada only. It is a private clearing-house system between the Federal Reserve in Minneapolis, Minnesota (USA), and the TD Bank in Toronto. No third party (like SWIFT) is involved. The system is extra secure as the transactions are done through a private telephone line (not the Internet) from one mainframe computer to another. There is no minimum limit to the level of payment and it can be used for commercial, private and government purposes. Social benefits and pensions payments are also transmitted through this system. Batch payments of millions of dollars are operated once a day and funds are secured within 2 or 3 days. Therefore the risk is very low. The extremely high volume of transactions makes the system very inexpensive. The fee for a maintenance payment is around 5 Eurocents. Transfers in the United States are electronically directed

³⁸ *Ibid.*, Article 3. For example, a credit transfer of 100 Euros from ABN AMRO in The Netherlands to NORDEA Bank in Finland would be free of charge at both ends of the transfer. Similar transfers from Germany to the rest of the Euro zone are also free of charge.

³⁹ This information was obtained before 1 May 2004.

⁴⁰ < <http://www.swift.com> >

⁴¹ < <http://www.frbervices.org> >

to the Federal Reserve in Minneapolis at very low cost and payments received in Canada are once again transferred electronically at very low costs to all other banks and their branches throughout Canada. Furthermore, the system makes an automatic foreign exchange.

25. A southbound transfer (Canada-United States) at low costs is also possible. To do so, the TD Bank in Toronto would transfer the funds to its branch in New York. The New York branch having access to the domestic clearing-house system in the United States can then transfer the funds at very low costs to any bank in the United States. Our recent consultations revealed that the Federal Reserve in Minneapolis is now contemplating piloting similar systems with Austria, Germany, the Netherlands, Switzerland and the United Kingdom.

E) Other issues in relation to transfer of funds

26. In its response to the Additional Questionnaire Australia sought information from the Permanent Bureau concerning the protection against currency exchange loss. Maintenance payments usually have to be made in foreign currency while being collected in a local currency. Between the time of collection and distribution of the payment, the fluctuation of the exchange rate could result in a loss or a gain. One solution to alleviate exchange rate fluctuations is the use of SWAPs. A SWAP is a financial operation that consists in buying on the stock market, at the time of the collection, the equivalent amount of money in another currency. Then at the time of payment (*i.e.* when the maintenance payments are converted into the foreign currency) the stock of foreign currency is sold back on the market. Thus, a loss on one side of the operation will be compensated by a gain on the other as the two transactions mirror each other. A similar compensation could also be operated by setting-off the two transfers. However, there is a remote chance that the two amounts be equal. What would not be set off could be transferred electronically. The set-off would result in a lower currency exchange loss and lower transfer costs. Another possibility to alleviate exchange rate fluctuations is to shorten as much as possible the delay between collection and distribution. The use of electronic transfers to the entire collection and distribution scheme would certainly assist in reducing currency exchange loss.

F) Conclusion

27. Further to this overview of international electronic transfer of funds mechanisms, it appears that Article 24 of the Working Draft is sufficient to encourage States to promote the use of the most cost-effective and efficient methods available to transfer funds. In this regard, States are encouraged to put in place the appropriate legal framework to facilitate international credit transfers such as the UNCITRAL Model Law on International Credit Transfers. It will provide the adequate framework to facilitate the electronic transfer of funds.

28. Where there is a high volume of transfers between two States, the possibility of combining the social insurance and the maintenance payments networks should be encouraged as they both entail similar types of payments and monitoring. Furthermore, States should transfer payments in bulk as much as possible and where there is not enough space on the electronic fund transfer (EFT) order / instructions to provide the break-down and / or all the case specific information, the EFT order / instructions should be supplemented with an additional cross-referenced data message including this information. Transfers in bulk could be done either between two different banks or between two branches of the same bank. In addition, where there is a high volume of transactions the use of SWAPs or compensation can help reducing the currency exchange loss. In any event, the best method to alleviate exchange rate fluctuations is to shorten as much as possible the delay between collection and distribution.

29. Where the volume of transfers between two States is too small to set-up highly developed electronic systems, the use of mechanisms such as inter-branch transfers, Credit Unions, the International Remittance Network, ATM Cards (including Internet Banking) and the Mobile Payment Forum should be contemplated.

CHAPTER III ELECTRONIC COMMUNICATIONS

30. From time to time during the discussion in the May 2003 Special Commission meeting, reference was made to the savings in cost and time that could be achieved by the use of new information technologies.⁴² It was generally agreed that the use of electronic communications is desirable.⁴³ There was general agreement to the effect that the system should be capable of processing requests swiftly, cost effective, flexible, user-friendly and should not impose obligations which are too burdensome.⁴⁴ Some experts stated that their Central Authority already communicates via electronic means. While some experts pointed out that their respective States have enacted laws providing for the admission of electronically-transmitted documents; others reported that their State still requires authenticated written documents.⁴⁵

A) *Scope and nature of communications in the recovery of maintenance*

31. Before examining the application of information technology to communications in the recovery of maintenance it is important to note the breadth of such communications.

a) *Scope ratione personae and ratione materiae*

32. Communications for the recovery of maintenance can take place both at the domestic and at the international level. In most cases the process would be as follows. First, a purely domestic communication would take place between a person seeking to recover maintenance⁴⁶ or a person against whom there is an existing maintenance decision⁴⁷ and a Central Authority. Then, this domestic communication would become an international communication between two Central Authorities⁴⁸ from different States. Finally, this second communication would transform into a domestic communication between a Central Authority and a creditor, a debtor, an enforcement authority or another public authority involved in the maintenance recovery process.

⁴² Prel. Doc. No 5, paragraph 10.

⁴³ *Ibid.*, paragraph 35.

⁴⁴ *Ibid.*, paragraph 10.

⁴⁵ *Ibid.*, paragraph 35.

⁴⁶ Prel. Doc. No 7, Article 11(1) of the Working Draft provides that "[a] person resident in one Contracting State seeking to recover maintenance in another Contracting State may[, subject to the jurisdictional rules applicable in that State,] make application under the Convention ...". It remains to be decided which forms of application set out in Chapter III of the Working Draft could be made available to public bodies (see Prel. Doc. No 7, Articles 39 and 40 and footnote 117 of that Document). According to several experts during the May 2003 Special Commission, public authorities should have the right to make an application to a Central Authority. Several experts felt that the application process should be the same for public authorities as for individuals (see Prel. Doc. No 5, paragraph 28).

⁴⁷ Prel. Doc. No 7, Article 11(2) of the Working Draft provides "[a] person resident in one Contracting State against whom there is an existing maintenance decision may[, subject to the jurisdictional rules applicable in that State,] make application under the Convention ...".

⁴⁸ *Ibid.*, Articles 8(a) and 22(1) of the Working Draft provide that Central Authorities shall take all appropriate measures to transmit and receive application. Furthermore, according to Article 22(2) and (3) of the Working Draft a requested Central Authority shall acknowledge receipt of an application or indicate if other information is required. During the May 2003 Special Commission, experts generally preferred that an application proceed from the requesting Central Authority to the requested Central Authority. In their view, this procedure would reduce the risk of fraud. On the other hand, some experts felt it important that applicants should retain the rights to make applications directly to the judicial or administrative authorities of the State addressed (see Prel. Doc. No 5, paragraphs 27-28).

33. The communications for the recovery of maintenance will concern applications set out in Chapter III of the Working Draft,⁴⁹ the obtaining of documentary or other evidence,⁵⁰ specific information about cases⁵¹ and more general information.⁵² These communications will involve the transmission of different kinds of documents for which there will be different functions and different legal requirements. These documents will include: standard forms,⁵³ decisions,⁵⁴ certification, evidence,⁵⁵ information or documents required by the requested State⁵⁶. Furthermore, some of these documents may contain personal, confidential or sensitive information.⁵⁷

b) Legal requirements to be met by the information communicated

34. The information communicated will have to meet legal requirements set out both in the future instrument and the domestic legislation in force in the different States involved. For example, the use of standard forms in the new instrument may be mandatory.⁵⁸ The inclusion in the application of certain documents or information may also be mandatory.⁵⁹ Furthermore, certain language requirements may also have to be respected.⁶⁰ On the other hand, all documents transmitted under the new instrument will

⁴⁹ Prel. Doc. No 7, Articles 11-20 of the Working Draft set-out different possible applications: for recognition and enforcement of an existing decision (Article 12); to enforce a decision made in the requested State (Article 13); to establish a maintenance decision in the requested State where there is no existing decision (Article 14 – some reservations were expressed about the inclusion of this application (see Prel. Doc. No 5, paragraph 26)); to establish a maintenance decision in the requested State where recognition and / or enforcement of an existing order is not possible or is refused (Article 15 – some reservations were expressed about the inclusion of this application (see Prel. Doc. No 5, paragraph 26)); to modify an existing maintenance decision made or not made in the requested State (Articles 16-17); for the recovery of arrears (Article 18); for limited assistance (Article 19); and, for the establishment of parentage (Article 20).

⁵⁰ Prel. Doc. No 7, Article 8(j) of the Working Draft.

⁵¹ *Ibid.*, according to Article 8(i) of the Working Draft Central Authorities shall take all appropriate measures to provide, in accordance with Article 22(5), progress reports on particular cases, keep each other informed of person responsible for a particular case and the progress of a case, and provide timely responses to mutual enquiries. Furthermore, in accordance Article 8(k) Central Authorities shall take all appropriate measure to provide information about laws and procedures relevant to a case. Finally, Article 22(2) and (3) provides that Central Authorities shall acknowledge receipt of the application or indicates if other information is required.

⁵² *Ibid.*, according to Article 7(2)(a) of the Working Draft Central Authorities are required to provide information to the Permanent Bureau, thus to the public in general, as to the laws and procedures of their State concerning maintenance obligations.

⁵³ *Ibid.*, see Articles 8(a) and 11-20 of the Working Draft. During the May 2003 Special Commission experts endorsed the application of standard form for applications (see Prel. Doc. No 5, paragraph 26) but it remains to be decided whether their use will be mandatory or optional.

⁵⁴ Prel. Doc. No 7, Articles 5 and 26 of the Working Draft provide a definition of the term decision. A 'decision' includes – (a) a decision rendered by a judicial or administrative authority, (b) a settlement concluded before or approved by such an authority, (c) an agreement registered or filed with such authority, (d) a decision or settlement modifying a previous decision or settlement, and could include (e) an authentic instrument; and, (f) a private agreement which is enforceable but has not been registered. With respect to the application for recognition and enforcement of an existing decision set in Article 12 of the Working Draft, it may be the wish of the Special Commission to include a requirement to the effect that the application be accompanied by a synopsis / copy of the decision certified in accordance with a specific form which also remains to be discussed.

⁵⁵ *Ibid.*, Article 8(j) of the Working Draft. For the purpose of the application set-out in Article 12, it may be necessary in the case of a decision rendered by default to include in the application the original or a certified copy of any document required to prove that the notice of the institution of proceedings, including notice of the substance of claim, has been properly served on the defaulting party according to the law of the State of origin (see Prel. Doc. No 7, footnote 55, and the *Hague Convention of 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations*).

⁵⁶ Prel. Doc. No 7, Articles 14(f), 16(b) and 17(b) of the Working Draft. In relation to Article 14(f) this other information or document may include for example written authorisation empowering the Central Authorities to act on behalf of the applicant (see Prel. Doc. No 7, footnote 57).

⁵⁷ *Ibid.*, for example, in relation to the applications set-out in Articles 12 and 14 personal and confidential information such as the name, birth date, birth or marriage certificate, of the creditor or claimant, the name, address and address of the employer of the debtor and a description of the movable and immovable property of the debtor.

⁵⁸ *Supra*, footnote 53.

⁵⁹ Prel. Doc. No 7, Article 22(4) of the Working Draft.

⁶⁰ *Ibid.*, Article 23 of the Working Draft.

be exempt from legalisation or any analogous formality.⁶¹ In addition, depending on the type of information, the data communicated will have to meet the different evidence and procedural requirements of the law of the States involved. Furthermore, the information communicated will have to conform with other laws, especially those relating to the protection of personal information or privacy.

c) Functions of the documents communicated

35. In a paper world, the functions of the paper versions of the documents falling under the scope of the Working Draft would include one or more of the following:⁶² to provide that a document would be legible by all; to provide that a document would remain unaltered over time; to allow for the reproduction of a document; to allow for the authentication of data by means of signature; and to provide that a document would be in a form acceptable to public authorities and courts.

B) *From paper-based communications to electronic communications – The UNCITRAL Model Law on Electronic Commerce*

a) The “functional-equivalent” approach

36. The Model Law on Electronic Commerce adopted in 1996 by UNCITRAL⁶³ offers a solution for electronic communications in response to legal requirements prescribing the use of traditional paper-based documentation by way of extension of the scope of such notions as “writing”, “signature” and “original” with a view to including electronic-communications (*i.e.* data message) techniques. In this respect, the Model Law allows States to adapt their laws to developments in communications technology without removing the paper-based requirements or upsetting the concepts at the source of these requirements.⁶⁴

37. The Model Law is based on a new approach, the “functional equivalent approach”, which is founded on an analysis of the purpose and functions of the traditional paper-based requirement with a view to determining how those purposes or functions can be fulfilled through electronic-communications techniques.⁶⁵ “The Model Law does not attempt to define a computer-based equivalent to any kind of paper document. Instead, it singles out basic functions of paper-based form requirements, with a view to providing criteria which, once they are met by data messages, enable such data messages to enjoy

⁶¹ *Ibid.*, Article 42 of the Working Draft.

⁶² See, United Commission on International Trade Law (UNCITRAL), Guide to enactment of the UNCITRAL Model Law on Electronic Commerce (1996), United Nations, New York, 1999, paragraph 16, available at < <http://www.uncitral.org> >.

⁶³ The Model Law on Electronic Commerce adopted by UNCITRAL (A/51/162) is available at < <http://www.uncitral.org> >. A Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce (1996) is also available at the same address. Legislation implementing provisions of the Model Law has been adopted in Australia, China (Hong Kong SAR), Colombia*, Dominican Republic*, Ecuador*, France, India*, Ireland, Jordan, Mauritius, Mexico, New Zealand, Pakistan, Panama*, Philippines, Republic of Korea, Singapore, Slovenia, South Africa*, Thailand, the United Kingdom (the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man, all Crown Dependencies of the United Kingdom of Great Britain and Northern Ireland; in Bermuda, Cayman Islands, and the Turks and Caicos Islands, overseas territories of the United Kingdom of Great Britain and Northern Ireland) and Venezuela. Furthermore, Uniform legislation influenced by the Model Law and the principles on which it is based has also been prepared in Canada (Uniform Electronic Commerce Act, adopted in 1999 by the Uniform Law Conference of Canada - enacted in 10 provinces and territories) and in the United States of America (Uniform Electronic Transactions Act, adopted in 1999 by the National Conference of Commissioners on Uniform State Law – enacted in 45 states). * Except for the provisions on certification and electronic signatures.

⁶⁴ A Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce (1996), paragraph 15.

⁶⁵ *Ibid.*, paragraph 16.

the same level of legal recognition as corresponding paper documents performing the same function.”⁶⁶ The functional-equivalent approach in the Model Law has been taken in relation to the concepts of “writing”, “signature” and “original”.

b) Scope of the UNCITRAL Model Law on Electronic Commerce

38. The Model Law is media-neutral. The term “data message” (*i.e.* electronic communication) would include information created, recorded, transmitted or stored in digital form or in any other intangible form by electronic, magnetic, optical or similar means including, but not limited to, electronic data interchange,⁶⁷ electronic mail, the posting of messages on Internet sites, telegram, telex or telecopy.⁶⁸ Even though the Model Law is meant to address electronic communications in the commercial sphere, nothing in the Model Law prevents States from extending its scope to cover other activities such as governmental activities. In so doing, a good number of States have established information and technology standards to be met by the electronic documents and complied with by users. Furthermore, the Model Law applies to both international and domestic use of data messages. Nothing would prevent the application of domestic laws enacting the Model Law with respect to communications concerning the international recovery of maintenance.

c) Application of legal requirements to data messages – “legal recognition”, “Writing”, “signature”, “original”, “admissibility and evidential weight” and “retention” - including a description of the technology in support⁶⁹

39. The Model Law, in its Article 5, sets out a principle to the effect that information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message.⁷⁰ This non-discrimination principle is not intended to override any of the requirements contained in the Model Law.⁷¹

40. According to Article 6 of the Model Law, where the law requires information to be in “writing”, that requirement is met by a data message if the information therein is accessible so as to be usable for subsequent reference. Data messages can be stored on different types of support such as magnetic tapes, floppy disks, hard disks or microchips. Furthermore, these storing systems and the data messages themselves can be protected by the use of passwords or encryption.

41. Article 7 of the Model Law which deals with “signatures” provides, notably, that the requirement of a signature of a person is met in relation to a data message if a method is used to identify that person and to indicate that person’s approval of the information contained in the data message.⁷² Different techniques either on their own or in combination can be used in order to identify the originator of the data message and to

⁶⁶ *Ibid.*, paragraph 18.

⁶⁷ Electronic data interchange (EDI) refers to computer-to-computer communications such as the ones used for electronic transfer of funds in an automated clearing house system.

⁶⁸ Model Law on Electronic Commerce, Article 1.

⁶⁹ The Model Law also deals with issues such as the formation and validity of contracts (Article 11), recognition by parties of data messages (Article 12), attribution of data message (Article 13), acknowledgement of receipt (Article 14), time and place of dispatch and receipt of data message (Article 15).

⁷⁰ *Ibid.*, Article 5. A similar principle is incorporated in Section 316(e) of the Uniform Interstate Family Support Act (last amended or revised in 2001).

⁷¹ *Ibid.*, Articles 6 to 10 provide for these requirements.

⁷² It is important to note that in 2001 UNCITRAL adopted a Model Law on Electronic Signatures with a view, in particular, to supplement Article 7 of the 1996 Model Law. Only Thailand and Mexico have enacted the 2001 Model Law. It is the view of a number of countries that the legal issues related to the use of electronic commerce signatures have already been resolved by the 1996 Model Law. These countries do not plan to adopt further rules on electronic signatures.

indicate his or her approval.⁷³ First, the identity of the user of the system can be ensured by the use of a username, personal identification numbers (PINs), identity card or authentication through a biometric device. Digital signatures relying on public key cryptography and hash function⁷⁴ provide an example of another technique that can be combined with the first.⁷⁵ Another possibility is to combine the digital signature infrastructure with the supply of certification services. In this case, a third party verifies that the public key corresponds to a private key. Other techniques include the use of private networks such as private lines or virtual private networks established on a public network using a tunnelling function. The indication of approval can be ensured by the use of non-repudiation techniques such as digital signatures and the use of certificates. It should be noted that, under the Model Law, the mere signing of a data message is not intended to confer legal validity to the data message. Whether a data message that fulfills the requirement of a signature under the Model Law has legal validity is to be settled under the appropriate domestic law outside the legislation enacting the Model Law.

42. The "original" requirement is provided for under Article 8 of the Model Law. The requirement is met by a data message if there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as a data message or otherwise. The criteria for assessing integrity shall be whether the information has remained complete and unaltered. Techniques used in this respect include digital signatures, cryptography, hash function and tunnelling.

43. Article 9 of the Model Law sets the principles in relation to the "admissibility and evidential weight" of data messages. In assessing the evidential weight of a data message, regard shall be had to the reliability of the manner in which the data message was generated, stored or communicated, to the reliability of the manner in which the integrity of the information was maintained, to the manner in which its originator was identified, and to any other relevant factor. In this regard, all the techniques described above can be used on their own or in combination - the higher the security of the information system, the higher the admissibility and evidential weight of the data message.

44. The "retention" of data message is the last of the legal requirements provided for under the Model Law. Article 10 sets the conditions that are necessary to meet in order to fulfill the "data retention" requirements in an electronic environment. These conditions are the following: (1) the information contained in the message is accessible for subsequent reference; (2) the data message is retained in the format in which it was generated, sent or received; and (3) such information enables the identification of the origin and destination of a data message and the date and time when it was sent or received.

⁷³ See Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures (2001), United Nations, New York, paragraphs 29-62, for further information on technologies in relation to signatures.

⁷⁴ See, *ibid.*, paragraph 40, "A hash function is a mathematical process, based on an algorithm which creates a digital representation, or compressed form of the message, often referred to as a "message digest", or "fingerprint" of the message, in the form of a "hash value" or "hash result" of a standard length that is usually much smaller than the message but nevertheless substantially unique to it."

⁷⁵ See, for example, public key systems such as Secured Socket Layer (SSL) and Pretty Good Privacy (PGP).

45. The Model Law does not deal with the protection of personal information. However, it must be noted that the higher the security of the information system used for the transmission of data, the higher the confidentiality will be. In this respect the utilisation of passwords, identification devices, private lines or tunnelling and cryptography will be essential.

C) *Drafting a Convention that calls upon the application of the UNCITRAL Model Law on Electronic Commerce*

46. The new instrument should allow as much as possible the application of the principles enshrined in the UNCITRAL Model Law on Electronic Commerce as long as its implementation covers communications related to the international recovery of maintenance. In order to encourage this implementation, a specific reference to the Model Laws of UNCITRAL in relation to electronic commerce could be made in the preamble. Furthermore, the text of the new instrument should also be media-neutral.⁷⁶ In this respect, the Working Draft provides that Central Authorities shall employ the most rapid means of communication at their disposal.⁷⁷ The media-neutrality principle would not be affected by prescribing the use of the most rapid means of communication.

D) *Examples of existing electronic communications drawn from the answers to the Additional Questionnaire of 2004*

a) Electronic communications in the domestic context

47. Responses to the Additional Questionnaire indicate that in general applications for maintenance made before a judicial authority have to be transmitted in person or by post using paper.⁷⁸ In other States applications can be received by fax or e-mail as long as the documents in their original form follow by post.⁷⁹ However, in a number of States it is possible to send applications by fax or e-mail.⁸⁰ The responses regarding the transmission of public documents (*i.e.* court documents, administrative documents, notarial acts, official certificates such as birth or marriage certificates) follow more or less the same trend. Some States will only allow paper-based communications.⁸¹ Other States accept public documents sent by fax or e-mail as long as the original are sent by post

⁷⁶ During the May 2003 Special Commission it was explained that, in the new instrument, references to written documents should permit electronic communication for those States that have adopted the "functional equivalence approach" of the UNCITRAL Model Law on Electronic Commerce (see Prel. Doc. No 5, paragraph 35).

⁷⁷ Prel. Doc. No 7, Article 22(7) of the Working Draft (see also Prel. Doc. No 5, paragraph 42). During the May 2003 Special Commission experts expressed the desire that the communication by electronic means be used wherever possible (see Prel. Doc. No 5, paragraph 45).

⁷⁸ Austria, Japan, Luxembourg, Mexico, Morocco, Netherlands, Philippines, Switzerland, Sweden and the United Kingdom (England and Wales).

⁷⁹ Costa Rica, Czech Republic and Slovakia. Australia can receive applications by fax or telephone, subject to proof of identity. New Zealand can receive applications by fax in relation to child support.

⁸⁰ Canada (in urgent matters and where the medium is available), Denmark, Finland, Germany (by fax only) Norway, Portugal (documents must be reproduced in text format and hold an electronic signature certified by an authorised authority ("the certification service provider"), Serbia and Montenegro and the United States of America.

⁸¹ Austria, Finland, Japan, Luxembourg, Mexico, Morocco, Netherlands, Serbia Montenegro, Switzerland, Sweden and the United Kingdom (England & Wales).

shortly thereafter.⁸² Finally some States may receive public documents without the need for originals to follow.⁸³ Most States that have answered the Additional Questionnaire have indicated that they use fax or e-mail to respond to requests for general or specific information in relation to cases as long as it meets the protection of personal information requirements.⁸⁴ It is interesting to note that in some States individuals can consult their files on a secured website if they are registered users with username and password.⁸⁵ Furthermore, in the United States a private secured e-mail network has been put in place between the IV-D Agencies.⁸⁶ It transmits e-mail in batch to a server where e-mails are accessible the next day.

b) Electronic communications in the international context

(i) As a Requested State

48. Some States have no arrangement in place in order to communicate by electronic means.⁸⁷ Other States will apply their domestic requirements to the international context.⁸⁸ In this respect the Philippines and Portugal will allow the use of e-mail for all types of communications under the same conditions as domestically. Austria, Canada and Costa Rica will do the same for fax or e-mail as long as the original documents are sent afterwards by mail. Finland, Norway and Serbia and Montenegro will accept applications made by e-mail. Australia will accept applications and public documents sent by fax. Germany will accept applications by fax. Finally, a good number of States will accept requests for information by fax or e-mail as long as they meet their norms regarding the protection of personal information and privacy.⁸⁹ It is worth noting that Australia and New Zealand are examining the possibility to develop an e-mail encryption system or a web interface between their two Central Authorities.

(ii) As a Requesting State

49. Responses received as to the Requesting State scenario are virtually the same as for the Requesting State scenario apart from a few notable exceptions. In the case of Australia all communications are sent by mail because of the high standards embodied in the protection of personal information and privacy laws of Australia. In the case of New Zealand, the medium of transmission depends on the requirement of the other jurisdiction. Norway has no arrangements in place. In the case of the Philippines maintenance request are usually sent through the Embassy of the requested State.

⁸² Australia (by fax only), Canada (by fax only), Czech Republic, New Zealand (by fax only), Norway and Slovakia.

⁸³ Denmark (for certain documents the legislation may require paper originals), Philippines (according to the following conditions: (1) by evidence that it had been digitally signed by the person purported to have signed the same; (2) by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the documents; or, (3) by other evidence showing integrity and reliability to the satisfaction of the judge), Portugal and the United States of America.

⁸⁴ Austria, Luxembourg and Mexico do not use this method.

⁸⁵ Canada (British Columbia), New Zealand and the United States (in some jurisdictions).

⁸⁶ IV-D Agencies are authorities set up in each state of the United States in order to carry specific tasks and obligations provided for in the Uniform Interstate Family Support Act.

⁸⁷ Czech Republic, Denmark, Germany, Japan, Luxembourg and New Zealand.

⁸⁸ Australia, Canada, Finland, Mexico, Norway, Philippines, Portugal, Serbia and Montenegro, Switzerland, Sweden and the United Kingdom (England & Wales).

⁸⁹ Australia, Austria, Canada, Finland, Mexico, Morocco, Netherlands, New Zealand, Norway, Philippines, Portugal, Serbia and Montenegro, Switzerland, Sweden, the United Kingdom (England & Wales) and the United States.

- c) Implementation of the UNCITRAL Model Law on Electronic Commerce and its application to the recovery of maintenance

50. Out of the twenty-three jurisdictions that have responded to the Additional Questionnaire seven jurisdictions⁹⁰ have not yet enacted the UNCITRAL Model Law on Electronic Commerce; sixteen jurisdictions⁹¹ have enacted the UNCITRAL Model Law. Out of these fourteen jurisdictions ten do not apply the Model Law to the recovery of maintenance.⁹² On the other hand five jurisdictions allow for the use of electronic signatures for the recovery of maintenance.⁹³

E) Conclusion

51. Further to this study of electronic communications, it appears that the text of the Working Draft is medium neutral and therefore could be applied either in a paper-based or an electronic environment. Therefore, the new instrument would allow the application of the principles enshrined in the UNCITRAL Model Law on Electronic Commerce. However, that is as long as the implementation of the Model Law in domestic law covers communications related to the recovery of maintenance. In order to encourage this implementation, a specific reference to the Model Laws of UNCITRAL in relation to electronic commerce and their possible extension to civil matters could be made in the preamble.

52. States are encouraged to put in place bilateral or regional arrangements with regard to the use of electronic communications concerning the recovery of maintenance using the mechanisms described in this Chapter. In so doing, States should implement technologies that will meet the evidence requirements of their States and that will respect their laws on the protection of personal information and privacy.

⁹⁰ Austria, Costa Rica, Denmark, Netherlands, Norway, Slovakia and Switzerland.

⁹¹ Australia, Canada, Czech Republic, Finland, Germany, Japan, Luxembourg, Mexico, Morocco, New Zealand, Philippines, Portugal, Serbia and Montenegro (only for Montenegro), Slovenia, Sweden and the United Kingdom (England & Wales).

⁹² Australia, Canada, Germany, Japan, Luxembourg, Mexico, New Zealand, Slovenia, Sweden and the United Kingdom (England & Wales).

⁹³ Czech Republic, Morocco, Norway (within the next three years), Philippines and Portugal.

**CHAPTER IV OTHER USAGE OF INFORMATION TECHNOLOGY TO ASSIST
CENTRAL AUTHORITIES IN PERFORMING THEIR FUNCTIONS**

A) Websites to collect and disseminate information

53. Websites can be used in different ways in relation to the recovery of maintenance. They can be used to post public information such as the contact details of Central Authorities and, where appropriate, the extent of their functions,⁹⁴ standard application forms,⁹⁵ the laws and procedures of the States Parties to the Convention concerning maintenance obligations,⁹⁶ statistics and case law concerning the practical operation of the Convention⁹⁷ and country profiles. In all these cases, the information could be hosted on the website of the Hague Conference. Furthermore, the responsibility of maintaining this information up to date would fall upon the States Parties as they would be given a secured limited access to the content management system of the website.

54. Furthermore, creditors, debtors and / or foreign Central Authorities could consult secured websites for which they are registered users with a username and a password in order to monitor maintenance payments,⁹⁸ to consult progress reports on particular cases⁹⁹ or to obtain information about laws and procedures relevant to a particular case.¹⁰⁰ It might even be possible to directly initiate and file an application using a secured website thus eliminating the use of secured e-mails. However, the use of a secure website would require at first a paper-based communication in order to obtain clearance for the allocation of a username and password or other identification devices.

B) Databases and Case Management Systems

55. In certain States data matching of different databases is used in order to discover the whereabouts of the debtor.¹⁰¹ Every night, employment data is matched with the tax and social insurance data.¹⁰² The data may also be matched with the credit bureau and property registry data in order to obtain relevant information concerning the income and other financial circumstances of the debtor, including the location of assets.¹⁰³

56. With a view to the future and long-term application of the new instrument, it was mentioned that it could be useful to consider establishing an electronic case management system, such as that which is currently being piloted by the Permanent Bureau under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child*

⁹⁴ Prel. Doc. No 7, Article 10 of the Working Draft. Similar information is currently available on the Hague Conference website.

⁹⁵ During the May 2003 Special Commission, one observer argued in favour of an electronic form, which could be made available on a database maintained by the Hague Conference (see Prel. Doc. No 5, paragraph 36).

⁹⁶ *Ibid.*, Articles 7(2)(a) and 38 of the Working Draft.

⁹⁷ *Ibid.*, Article 43(2) of the Working Draft. The INCADAT website of the Hague Conference at < <http://www.incadat.com> > is an example of a case law database that could be followed in this respect.

⁹⁸ *Ibid.*, Article 8(g) of the Working Draft.

⁹⁹ *Ibid.*, Article 8(i) of the Working Draft.

¹⁰⁰ *Ibid.*, Article 8(k) of the Working Draft.

¹⁰¹ *Ibid.*, Article 8(d) of the Working Draft.

¹⁰² The United States operates a system of this kind. It is highly secure in order to respect protection of personal information or privacy laws.

¹⁰³ *Ibid.*, Article 8(e). During the May 2003 Special Commission, some experts noted that data protection rules could hinder the ability to obtain information relating to the assets of the debtor (see Prel. Doc. No 5, paragraphs 19 and 30).

*Abduction.*¹⁰⁴ Such a system could allow users to communicate and track the processing of maintenance cases effectively and at low cost. It was also mentioned that the establishment of an electronic case management system could contribute to a certain uniformity of practice and, therefore, increase confidence among Central Authorities, as well as facilitate the gathering of statistics.¹⁰⁵

C) *Other technologies*

57. The use of videoconferencing could be contemplated with a view to facilitating the taking of evidence.¹⁰⁶

¹⁰⁴ The International Child Abduction Statistical Database (INCASTAT).

¹⁰⁵ Prel. Doc. No 5, paragraph 62.

¹⁰⁶ See Conclusions and Recommendations adopted by the Special Commission on the Practical Operation of the Hague Apostille, Evidence and Service Conventions (28 October to 4 November 2003), paragraphs 42-44.

CHAPTER V CONCLUSION

58. In order to welcome the application of information technologies to the international recovery of maintenance, States are encouraged to put in place appropriate legal frameworks accommodating as many types of electronic communications as possible. The enactment of the 1992 UNCITRAL Model Law on International Credit Transfers and the 1996 UNCITRAL Model Law on Electronic Commerce would constitute a solid base. If necessary, the enactment of the 2001 UNCITRAL Model Law on Electronic Signatures could also be contemplated.

59. The Permanent Bureau will continue its work in relation to the use of information technology with respect to the international recovery of maintenance, including the transfer of funds at low costs. In this respect, the Permanent Bureau will want to continue to hear from the experts about their experience in relation to the electronic transfer of funds and the use of electronic communications. Furthermore, in carrying out its work the Permanent Bureau will continue to consult the relevant international and national banking institutions.