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**Quatrième réunion de la Commission spéciale sur le fonctionnement de la
*Convention de La Haye du 25 octobre 1980 sur les aspects civils de
l'enlèvement international d'enfants*
La Haye, 22-28 mars 2001**

**Informations sur l'ordre du jour et l'organisation
de la Commission spéciale
et
Questionnaire sur le fonctionnement pratique de la Convention et avis sur
d'éventuelles recommandations
établi par William Duncan, Secrétaire général adjoint**

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**Fourth Special Commission to review the operation of the
*Hague Convention of 25 October 1980 on the Civil Aspects of
International Child Abduction*
The Hague, 22-28 March 2001**

**Information concerning the agenda and organisation
of the Special Commission
and
Questionnaire concerning the practical operation of the Convention
and views on possible recommendations
drawn up by William Duncan, Deputy Secretary General**

*Document préliminaire No 1 d'octobre 2000
à l'intention de la Commission spéciale de mars 2001*

*Preliminary Document No 1 of October 2000
for the attention of the Special Commission of March 2001*

**Information concerning the agenda and organisation
of the Special Commission
and
Questionnaire concerning the practical operation of the Convention
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**PART A – INFORMATION CONCERNING THE AGENDA AND ORGANISATION OF THE
SPECIAL COMMISSION**

INTRODUCTION

1 The first two Special Commissions to review the operation of the 1980 Convention were held in 1989¹ and 1993.² The third Special Commission took place from 17-21 March 1997.³ At that time, there were forty-five States Parties to the Convention of which thirty-five were represented at the Special Commission. In addition, thirteen States which were not at the time Parties to the Convention (seven Member States of the Hague Conference and six other States participating as observers) attended the Special Commission. Four intergovernmental and seven non-governmental international organisations attended as observers.

2 Since 1997 a further seventeen States have become Parties to the Convention, four by ratification or analogous procedure (Belgium, China, (Hong Kong Special Administrative Region and Macau only), the Czech Republic and Turkey) and thirteen by accession (Belarus, Brazil, Costa Rica, Fiji, Georgia, Malta, Moldova, Paraguay, South Africa, Trinidad and Tobago, Turkmenistan, Uruguay and Uzbekistan). At the same time as this process of globalisation, the Convention has become the subject of close scrutiny in several of the States Parties. Commissions and enquiries of various kinds have been established at national level.⁴ Academic research and writing on the Convention has proliferated.⁵

¹ See Overall Conclusions of the Special Commission of October 1989 on the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, *International Legal Materials*, Vol. XXIX, March 1990, p. 219. (See Hague Conference website at: <http://www.hcch.net>.)

² See Report of the second Special Commission meeting to review the operation of the Hague Convention on the Civil Aspects of International Child Abduction, *International Legal Materials*, Vol. XXXIII, January 1994, p. 225. (See Hague Conference website at: <http://www.hcch.net>.)

³ See Report of the third Special Commission meeting to review the operation of the Hague Convention on the Civil Aspects of International Child Abduction, drawn up by the Permanent Bureau, August 1997. (See Hague Conference website at: <http://www.hcch.net>.)

⁴ See for example, A Report to the Attorney General on International Parental Kidnapping. *Report of Subcommittee on International Child Abduction of the Federal Agency Task Force on Missing and Exploited Children and the Policy Group on International Parental Kidnapping* (USA, April 1999); Government of Canada, *Government's Response to the Fourth Report of the Standing Committee on Foreign Affairs and International Trade* (International Child Abduction: Issues for Reform), November 1998; Belgian Senate, Seminar on the Application of the Hague Convention on the Civil Aspects of International Child Abduction, Report, Brussels, 29 March 2000.

⁵ See the bibliography on the Convention on the Hague Conference website at: <http://www.hcch.net>.

There are now more non-governmental organisations with a special interest in international child abduction.⁶ A number of international judicial seminars/conferences have been held at which aspects of the operation of the Convention have been reviewed.⁷ The operation of the Convention has also generated a good deal of publicity in several States, as well as a certain degree of political activity in some.⁸

DRAFT AGENDA FOR THE SPECIAL COMMISSION

3 The proposal of the Permanent Bureau to convene a fourth Special Commission⁹ was accepted unanimously by the Special Commission on general affairs and policy of the Conference in May 2000.¹⁰ That Special Commission agreed that the agenda of the Special Commission in March 2001 should concentrate on those aspects of the operation of the 1980 Convention which experience has shown are key to its successful operation, especially those in respect of which there are significant difficulties or differences of approach among States Parties. The following draft agenda was considered and its broad structure agreed to:

⁶ For example, the European Network on Parental Child Abduction which includes Reunite (UK), Bortrovade Barns Forening (Sweden), Com. of Missing Children (Germany), Fondation Pour l'Enfance (France), Missing Children International (Belgium), Child Focus (Belgium), CSME (France), ICPAC (Ireland), SOS International Child Kidnapping (France). The Network's first conference was held in London on 15 April 1999, and the International Centre for Missing and Exploited Children (ICMEC), launched in Washington, DC, in April 1999.

⁷ For example, the Seminar for Judges on the International Protection of Children, held at De Ruwenberg in the Netherlands, 22-25 June 1998 ("De Ruwenberg I"), organised by the Hague Conference, with the support of the Grotius Programme of the European Union, involving 35 judges from 26 States Parties to the 1980 Convention; the Seminar for Judges on the International Protection of Children, held at De Ruwenberg from 3-6 June 2000 ("De Ruwenberg II"), organised by the Hague Conference at the request of the French and German Ministries of Justice, involving nearly 40 judges from France, Germany, Italy and the Netherlands; the Common Law Judicial Conference on International Child Custody, held at Washington, DC, from 17-21 September 2000, organised by the State Department, involving judges, practitioners and Central Authority personnel from the United States, England and Wales, Scotland, Canada, Australia, New Zealand and Ireland, as well as observers from 24 other States; the United Kingdom-Germany Judicial Conference on Family Law, held in Edinburgh 26-28 September 2000 (the third in a series of United Kingdom-Germany judicial conferences).

⁸ See for example, *Déclaration Commune des Ministres Français et Allemand de la Justice sur les Conflits Familiaux des Couples Mixtes Franco-Allemand*, Avignon, le 6 mai 1998; Government Resolution by the House of Representatives (the Senate concurring) Urging Compliance with the Hague Convention on the Civil Aspects of Child Abduction, 23 March 2000, 106th Congress, 2nd Session, H.Con.Res.293; Seminar on the application of the Hague Convention on the Civil Aspects of Child Abduction, organised by the Belgian Senate, 29 March 2000.

⁹ See Preliminary Document No 6 of April 2000, Note "Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction - Preparations for a fourth Special Commission meeting to review the operation of the Convention and a description of the work currently undertaken by the Permanent Bureau in support of the Convention". (See Hague Conference website at: <http://www.hcch.net>.)

¹⁰ See Preliminary Document No 10 of June 2000, Conclusions of the Special Commission of May 2000 on general affairs and policy of the Conference, at p. 19. (See Hague Conference website at: <http://www.hcch.net>.)

(1) The role and functioning of Central Authorities

- a* resources and capacities;
- b* the role played by Central Authorities at different stages in the Hague process;
- c* information and statistics.

(2) Judicial proceedings, including appeals and enforcement issues, and questions of interpretation

- a* courts organisation;
- b* provision of legal representation;
- c* speed of Hague procedures, including appeals;
- d* manner of taking evidence, especially in relation to the Article 13 defences;
- e* procedures for hearing the child and determining whether the child objects to return;
- f* methods and speed of enforcement;
- g* interpretation of key concepts such as habitual residence, rights of custody, acquiescence, etc.

(3) Issues surrounding the safe and prompt return of the child (and the custodial parent, where relevant)

- a* safe harbour orders, mirror orders and undertakings, including questions of international jurisdiction and the enforcement of orders;
- b* criminal proceedings and immigration issues;
- c* direct judicial communications – their feasibility and limits;
- d* the role of Central Authorities (See Item 1 above).

(4) Procedures for securing cross-frontier access/contact between parent and child

- a* the role of Central Authorities and other intermediaries;
- b* promoting agreement by mediation, etc;
- c* jurisdiction, recognition and enforcement in respect of cross-frontier contact.

(5) Securing State compliance with Convention obligations

- a* the accession process;
- b* monitoring/reviewing State practice;
- c* frequency and form of Special Commissions.

(6) Miscellaneous and general

- a* the role of the Permanent Bureau;
- b* the International Child Abduction Database (INCADAT);
- c* judicial (and other) training and networking;
- d* encouraging further ratifications and accessions;
- e* non-Hague States and bilateral arrangements.

It should be emphasised that this agenda remains in draft form. There are a number of factors which will influence its final shape and content, in particular the responses received by the Permanent Bureau to this document, including the Questionnaire. It may also be necessary to change the order of some of the items on the agenda. However, the broad idea of discussing first items of particular concern to Central Authorities and subsequently matters relating to the judicial process and enforcement (although clearly these matters cannot be entirely separated) will as far as possible be respected.

PARTICIPATION IN THE SPECIAL COMMISSION

4 All Member States of the Hague Conference and States Parties to the 1980 Convention, have been invited to attend the Special Commission. In addition certain intergovernmental organisations and non-governmental international organisations have been invited to send representatives as observers. It is hoped that delegations will, as usual, include Central Authority personnel and other relevant practitioners. In addition it is expected that there will be greater judicial involvement in the fourth Special Commission, particularly in the discussions concerning the judicial process and judicial co-operation/communications.

PART B - QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE CONVENTION AND VIEWS ON POSSIBLE RECOMMENDATIONS

INTRODUCTION TO THE QUESTIONNAIRE

5 The questionnaire which appears below is addressed in the first place to States Parties to the 1980 Convention. It has three broad objectives:

- a* to seek information concerning significant developments since 1997 in law or practice surrounding the Convention in the different Contracting States;
- b* to identify current difficulties experienced in the practical operation of the Convention; and
- c* to test opinion in respect of certain possible recommendations.

6 With respect to *a* and *b* above, it should be emphasised that respondents are also invited to identify and comment upon matters concerning the practical operation of the Convention which are not addressed specifically in the Questionnaire.

7 With respect to *c* above, the Special Commission on general affairs in May 2000 broadly supported the idea that the Special Commission of March 2001 should, subject to the necessary consensus, attempt to arrive at recommendations to improve the practical operation of the Convention. With this in view, and in order to begin to determine in what areas a consensus may exist, the Questionnaire seeks the initial reaction of respondents to a number of possible draft recommendations. It is recognised that some States may not be in a position to comment on all of the recommendations at this stage. Also the right of delegations, alone or in combination, to make alternative or additional recommendations, should be emphasised. In this regard, it would add to the efficiency of proceedings if States could as far as possible give advance notification to the Permanent Bureau of any proposed recommendations, preferably in conjunction with their responses to the Questionnaire.

8 The Questionnaire is also being sent to non-Party Member States invited to attend the Special Commission, as well as intergovernmental organisations and non-governmental international organisations invited to attend. All of these are invited to make such submissions in response to the Questionnaire as they deem to be appropriate. In addition, this document will be posted on the Hague Conference website (www.hcch.net).

9 The Permanent Bureau would be grateful if responses to the Questionnaire could be sent to the Permanent Bureau, if possible in electronic form, **by 19 January 2001**.

Questionnaire concerning the practical operation of the Convention and views on possible recommendations

(1) The role and functioning of Central Authorities¹¹

- *General questions:*

1 **Have any difficulties arisen in practice in achieving effective communication or co-operation with other Central Authorities in accordance with Article 7 of the Convention? If so, please specify.**

Based on input received at ICMEC's 1st and 2nd International Child Abduction Forums, we have learned that many Central Authorities do not effectively communicate information to one another with regard to Article 7 of the Convention. Some Central Authorities fail to respond to inquiries posed to them, to provide the relevant law of their State or to keep one another informed about the progress of a particular Hague case. Lack of communication breaks down the mutual trust between signatory nations.

2 **Have any of the duties of Central Authorities, as set out in Article 7, raised any problems in practice?**

While ICMEC recognises that the Hague Convention is a positive and necessary treaty, we also recognise that various Central Authorities have difficulty carrying out some of their duties as set out in Article 7, such as:

- In many countries, the administrative and judicial processes are slow, complex, and overly bureaucratic, thereby delaying the prompt return of children or enforcement of access rights;
- States Parties without implementing legislation often slow down the judicial process;
- Central Authorities have difficulty enforcing access rights for left-behind parents. Judges are often hesitant to order specific and clearly defined access, thereby making enforcement of the order difficult, if not impossible;
- In many countries, parents need significant personal financial resources to obtain legal representation and proceed under the Convention. Yet, some States Parties have made an Article 42 reservation to providing legal aid under Article 26 of the Convention, thereby making it more difficult for parents who lack financial resources to secure legal counsel and advisers, particularly those with experience;

¹¹ Conclusion IV of the first Special Commission called upon States to:

"... give their Central Authorities adequate powers to play a dynamic role, as well as the qualified personnel and resources, including modern means of communication, needed in order expeditiously to handle requests for return of children or for access". (Overall Conclusions of the Special Commission of October 1989 on the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, February 1990, Conclusion IV at p. 45.)

Conclusion 3 of the second Special Commission to review the operation of the Convention was as follows:

"The Central Authorities designated by the States Parties play a key role in making the Convention function. They should act dynamically and should be provided with the staff and other resources needed in order to carry out their functions effectively." (Report of the second Special Commission meeting to review the operation of the Hague Convention on the Civil Aspects of International Child Abduction, June 1993, Conclusion 3 at p. 16.)

- In some countries, there are no civil mechanisms in place to enforce return and access Hague orders, thereby delaying or preventing the prompt return of children or the ability of parents to secure their rights of access;
- Central Authorities do not always have strong links and communication between themselves, parents, judges, attorneys, Embassies and Consulates, thereby hindering their ability to fulfil the obligations under Article 7 d, e, h and i. For instance, some countries do not use the internet as much as they could to provide useful information about their practice and procedures;
- Many Central Authorities have difficulty discovering the whereabouts of a child at the application stage. In some countries, the police, prosecution services and other government agencies who would ordinarily be involved in the search process, view international child abduction as a civil matter and are often hesitant to get involved in locating a child who is the subject of a Hague application. When judicial proceedings are slow, a parent may re-abduct, thereby making the location process necessary once again and causing more delays. Courts who issue return orders which are not immediate also allow the abducting parent and child time to flee if safeguards, such as posting a monetary bond to the court or turning over all passports, are not in place.

- ***Particular questions:***

- 3 What measures are taken by your Central Authority or others to secure the voluntary return of a child or to bring about an amicable resolution of the issues (Article 7 c)? Do these measures lead to delay?**
- 4 What measures does your Central Authority take to provide or facilitate the provision of legal aid and advice in Hague proceedings, including the participation of legal counsel and advisors (Article 7 g)? Do these measures result in delays in your own jurisdiction or, where cases originate in your country, in any of the requested jurisdictions?**

ICMEC has noted that in many countries, parents incur significant costs in order to obtain legal representation and to proceed under the Convention. Additionally, ICMEC acknowledges that there is a great variation in the quality of legal representation provided in Hague cases. In some countries, the only free or reduced fee legal assistance available is through lawyers whom the Central Authority or acting Central Authority recruits to handle such cases. In other countries, the Central Authority will not provide the applicant with an attorney to handle the Hague case, but will represent the applicant throughout the Hague procedure, usually on a neutral third party basis. Some systems supply free legal representation to all applicants, regardless of means or merits, thereby speeding up the operation of the Hague. In addition, some States go one step further by centralising their legal systems and maintaining a core list of experienced practitioners.

ICMEC prefers the provision of free representation by knowledgeable practitioners.

- 5 Does your Central Authority represent applicant parents in Hague proceedings? If so, has this role given rise to any difficulties or conflicts, for example with respect to other functions carried out by your Central Authority?**

6 What obligations does your Central Authority have, and what measures does it take, to ensure that a child returned to your country from abroad receives appropriate protection, especially where issues of (alleged) abuse or violence have arisen?¹² In particular, does your Central Authority:

- a ensure that appropriate child protection bodies are alerted;**
- b provide information to either parent in respect of legal, financial, protection and other resources in your State;**
- c facilitate contact with bodies providing such resources;**
- d assist in providing any necessary care for the child pending custody proceedings;**
- e provide any other support, advice or information to a parent who accompanies the child on return;**
- f provide any assistance in ensuring that undertakings attached to a return order are respected.**

- ICMEC supports Central Authorities informing appropriate child protection bodies, such as child protective agencies, law enforcement and mental health services, of possible abuse or violence against a child upon his or her return to the requesting country;
- ICMEC encourages Central Authorities to provide child protection bodies with education on Hague Convention issues;
- ICMEC urges close co-operation between judges and Central

¹² Respondents are reminded of the discussions which took place during the third Special Commission (see Report of the third Special Commission, *op. cit.* footnote 3, especially paragraphs 57 to 64 and Annexes I to III). The synthesis of that discussion, as drawn up by the Permanent Bureau (see Annex III), was as follows:

"1 To the extent permitted by the powers of their Central Authority and by the legal and social welfare systems of their country, Contracting States accept that Central Authorities have an obligation under Article 7 *h* to ensure appropriate child protection bodies are alerted so they may act to protect the welfare of children upon return until the jurisdiction of the appropriate court has been effectively invoked, in certain cases.

2 It is recognized that, in most cases, a consideration of the child's best interests requires that both parents have the opportunity to participate and be heard in custody proceedings. Central Authorities should therefore co-operate to the fullest extent possible to provide information respecting, legal, financial, protection and other resources in the requesting State, and facilitate contact with these bodies in appropriate cases.

[3 The measures which may be taken in fulfillment of the obligation under Article 7 *h* to take or cause to be taken an action to protect the welfare of children may include, for example:

a) alerting the appropriate protection agencies or judicial authorities in the requesting State of the return of a child who may be in danger;

b) advising the requested State, upon request, of the protective measures and services available in the requesting State to secure the safe return of a particular child;

[c] providing the requested State with a report on the welfare of the child;]

d) encouraging the use of Article 21 of the Convention to secure the effective exercise of access or visitation rights.]"

Authorities to ensure that the court's order includes appropriate safeguards and protections for the child's return, especially when abuse and violence allegations have been raised;

- ICMEC believes that Central Authorities should provide both parents with information concerning legal aid, financial assistance, child protection services, shelter, mental health services and other resources within their State;
- ICMEC advocates the need for the child to have contact with both parents whenever it is possible for the child to do so in a safe environment. Nevertheless, when abuse allegations are raised, Central Authorities should facilitate and oversee the protection of the child from harm pending custody proceedings;
- When necessary, ICMEC agrees that Central Authorities should provide advice on obtaining protective orders to a parent who accompanies the child on return;
- ICMEC feels that if conditions or undertakings are involved, they should be enforceable in both jurisdictions. Central Authorities should facilitate prior consultation between courts and parties as appropriate to discuss the reasonableness of the proposed conditions of return.

7 What arrangements does your Central Authority make for organising or securing the effective exercise of rights of access (Article 7 f)?

In particular, in the case of an applicant from abroad,¹³ does your Central Authority:

- a provide information or advice;**
- b facilitate the provision of legal aid or advice;**
- c initiate or assist in the institution of proceedings, where appropriate, on behalf of the applicant;**
- d assist in ensuring that the terms or conditions on which access has been ordered or agreed are respected;**
- e assist in cases where modification of existing access provisions is being sought.**

ICMEC finds the enforcement of access rights for left behind parents to be lacking in many Hague signatory nations. All Central Authorities should have a more direct responsibility in ensuring a left-behind parent's rights of access both during Hague Convention proceedings and afterward. Practitioners and Central Authorities should utilise Articles 7, 21, 27 and 29 of the Hague Convention to give priority to access requests by developing working practices, judicial interventions and making changes to implementing legislation when necessary. In addition, ICMEC advocates consideration of other legal and judicial

¹³ In answering these questions please distinguish where appropriate between:

- a* applications pending return proceedings;
- b* applications following a refusal to return a child;
- c* applications not made in connection with other proceedings; and
- d* applications to modify existing access orders.

Please note also that the term "access" should be read as including all forms of contact.

remedies to enforce access rights, such as the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility (hereafter, the "Hague Convention on the Protection of Children.") and court-appointed mediation when appropriate. ICMEC also feels strongly that Central Authorities should assist in the provision of minor access rights involving communication problems, such as correspondence and telecommunication issues.

In particular, in the case of an applicant from abroad, ICMEC agrees that Central Authorities should do the following to ensure the effective exercise of access rights:

- Provide information or advice;
- Facilitate the provision of legal aid or advice;
- Initiate or assist in the institution of proceedings, when appropriate, on behalf of the applicant;
- Assist in ensuring that the terms or conditions on which access has been ordered or agreed are respected;
- Assist in cases where modification of existing access provisions is being sought.

8 Please comment on any developments in relation to the maintenance of statistics concerning the operations of your Central Authority. Has your Central Authority been able to return to the Permanent Bureau annual statistics in accordance with the Hague standard forms? If not, please explain why?

ICMEC notes a lack of empirical data on the operation of the Hague Convention. ICMEC encourages tracking Hague outcomes on a global basis and applauds the Permanent Bureau for maintaining their international child abduction database (INCADAT). ICMEC recommends funding the INCADAT project as generously as possible. Additionally, ICMEC encourages all Central Authorities to return to the Permanent Bureau annual statistics on all Hague cases.

9 Can you affirm or reaffirm, as the case may be, support for the conclusions reached by the first, second and third Special Commissions, as set out in footnotes 11 and 12?

Please see ICMEC's response to questions 6 and 7 above. In addition, ICMEC advocates the exploration of establishing stronger working relationships with protective shelters in individual States to assist returning parents and children pending court proceedings in cases where abuse is an issue. ICMEC also recommends that all Central Authorities provide details regarding their countries specific process for handling Hague cases.

10 Would you support any other recommendations in respect of the particular functions which Central Authorities do or might carry out, especially with regard to the matters raised in questions 6 and 7 above?

(2) Judicial proceedings, including appeals and enforcement issues, and questions of interpretation¹⁴

1 How many courts and how many judges potentially have jurisdiction to hear an application for the return of a child? If there is more than one level of jurisdiction at first instance, please specify the number of courts and judges for each level.

ICMEC believes that there are too many judges hearing cases who have little prior knowledge or experience regarding the Hague Convention. Moreover, there are currently too many courts hearing cases and few cases per court. ICMEC recommends that in cases involving international child abduction, jurisdiction to determine such matters should be limited to a small number of courts/tribunals in order to allow judges and practitioners to gain maximum experience, specialisation and consistency on the Hague Convention and to promote increased confidence between legal systems. ICMEC also advocates limiting the number of judges handling Hague cases. Finally, ICMEC supports the idea of forming a neutral tribunal to act as a supervisory panel/court over all the signatory countries to review complaints concerning the implementation of the Convention in their territory.

2 Do you have any special arrangements whereby jurisdiction to hear return applications is concentrated in a limited number of courts? Are such arrangements being contemplated?

ICMEC favours the English system of limiting the number of lawyers and judges involved in handling Hague cases.

3 What measures exist to ensure that Hague applications are dealt with promptly (Article 7) and expeditiously (Article 11)? In particular:

- a is it possible for the application to be determined on the basis of documentary evidence alone?**
- b what special measures/rules exist to control or limit the evidence (particularly the oral evidence) which may be admitted in Hague proceedings?**
- c who exercises control over the procedures following the filing of the application with the court and prior to the court proceedings, and how is that control exercised?**
- d what appeal is possible from the grant or refusal of a return application, within what time limits do appeals operate, on what grounds and subject to what limitations?**

ICMEC firmly believes that a pivotal factor in the successful application of the Hague Convention is the speedy disposal of applications. ICMEC has found that in many countries, applications can take several months to resolve. Some cases, due to appeals or other complications, are

¹⁴ Delay in legal proceedings has long been identified as a major cause of difficulties in the operation of the Convention. For example, the second Special Commission called upon States Parties to make "all possible efforts ... to expedite such proceedings." (Report of the second Special Commission meeting to review the operation of the Hague Convention on the Civil Aspects of International Child Abduction, June 1993, Conclusion 7 at p. 18.)

known to have dragged on for years. Furthermore, many parents struggle to enforce their rights of access well beyond the initial application. ICMEC urges Contracting States to adopt a tight schedule following the model set by the Central Authority in the UK and Wales. The UK Central Authority sets itself an 80 percent target of forwarding "incoming" cases to a solicitor within 24 hours and an average turnaround time between receiving an application and making an order of 6 weeks and of 15 weeks in the case of applications going to appeal. In the UK, Hague cases are given top priority listing in court. Additionally, trial judges have vast powers to find children, including forcing third parties to divulge information, thus minimising the delay in the initial location process. Short hearings are scheduled, usually under one day, which helps to ensure availability of lawyers and reduce delays. Most hearings are conducted without oral testimony, particularly from expert witnesses. Hearings are based on affidavits as evidence-in-chief in most instances. When oral evidence is given, it is highly focused and time limited. Welfare officers are discouraged in cases other than children's objections. When necessary, however, court welfare officers will draft oral reports on very limited notice. Judgements are typically handed down immediately and orally and orders are usually issued on the same day as the decision is made. Appeal hearings are not re-hearings, and they are allowed only in relation to arguments of error of law. Appeals must also be lodged within 14 days of the First Instance decision, and resolution of appeals is expedited through fast tracking. There is an overall target of 6 weeks for resolution. Appeals to the highest court in the UK are very rare and only possible if there is a point of law at issue that is vital to public interest. The highest court also fast-tracks Hague appeals.

ICMEC also advocates educating judges and practitioners on the tenets of the Hague. ICMEC supports the idea of international and regional conferences to allow judges and practitioners the opportunity to discuss common problems of interpretation. ICMEC notes that the Hague Convention also seems to operate expeditiously in countries such as Australia, Ireland and the UK where a limited number of experienced judges have jurisdiction. ICMEC believes that if all States Parties adopted a similar system, performance under the Hague Convention would improve significantly.

4 In what circumstances, and by what procedures/methods, will a determination be made as to whether a child objects to being returned?

In what circumstances in practice will the objections of the child be held to justify a refusal to return? (Please indicate the statutory basis, if any.)

The goal of the Hague Convention is to return children promptly to their habitual residence who have been wrongfully removed or retained. The Article 13b "will of the child" exception, therefore, should be taken into account only under exceptional circumstances in order to avoid the risk of transforming the return procedure into a hearing on best interests of the child and custody. The inquiry should distinguish between a child's objections to being returned to his or her habitual residence and a return to the other parent. When taking into account the "will of the child" to oppose return to his or her habitual residence, the role of the judge is crucial. The judge must take into account the child's age, degree of maturity, comprehension and the nature of the proceeding. The judge must also discern whether any undue

parental influence on the child is present, either through deliberate indoctrination by the abducting parent or simply by the natural inclination of many children to support a present parent against an absent parent. The judge of the requested country should refer the question of residence and protection of the child to the judge where the child has habitual residence.

5 Where the person opposing return raises any other defences under Article 13 or Article 20, what are the procedural consequences? What burden of proof rests on the defendant? Does the raising of defences under Articles 13 or 20 in practice lead to delay? What measures, if any, exist to reduce such delay to a minimum?

ICMEC believes that defences under Articles 13 and 20 can lead to substantial delays in the proceedings, particularly when cases are first heard at lower levels where judges have little or no Hague Convention expertise. ICMEC has noted that inexperienced judges tend not to differentiate between proceedings under the Hague Convention and domestic custody cases. As a result, judges treat these objections, particularly under Article 13b, as a merit of a custody case, requesting the involvement of welfare officers, the presentation of written reports and/or the hearing of witnesses. This practice significantly delays proceedings and gives the person opposing the child's return an additional advantage in the Hague case, namely that the child is now adapted to its new environment and should not be moved again. It is therefore desirable that when these objections are raised, they should be very narrowly interpreted. If defences under Articles 13 and 20 are broadly construed, the general principle of the Hague Convention, specifically, the prompt return of children to their habitual residence, will be undermined.

6 Please specify the procedures in place in your jurisdiction to ensure that return orders are enforced promptly and effectively? Are there circumstances (apart from pending appeals) in which execution of a return order may not be effected. Do return orders require separate enforcement proceedings? Is there appeal from such proceedings? Are such enforcement procedures routinely invoked, and are they successful in achieving the enforcement of return orders?

ICMEC considers the non-enforcement of court orders to severely undermine the effectiveness of the Hague Convention. ICMEC advocates that signatory countries amend their internal laws to create an enforceable judicial means for full and prompt enforcement of return orders. ICMEC also advocates that signatory countries amend their internal laws to eliminate the application of constitutional and procedural laws to Hague Convention cases when application of those laws may result in delay or difficulty enforcing an order made under the Hague. Courts will need to draft orders in a manner which ensures their prompt and effective enforcement. An order to return a child should be enforceable with the assistance of an officer of the court empowered to enlist the support of law enforcement when necessary.

7 Would you support any of the following recommendations?

- a calling upon States Parties to consider the considerable advantages to be gained from a concentration of jurisdiction in a limited number of courts.¹⁵**

¹⁵ See, for example, Conclusion No 4 of the "De Ruwenberg II" Judicial Seminar (footnote 7, above):

"It is recognized that, in cases involving the international protection of children, considerable advantages are to be gained from a concentration of jurisdiction in a limited number of courts/tribunals. These advantages include the accumulation of experience among the Judges and practitioners concerned and

ICMEC supports this recommendation.

- b underscoring the obligation of States Parties to process return applications expeditiously, and making it clear that this obligation extends also to appeal procedures.**¹⁶

ICMEC supports this recommendation.

- c calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications.**¹⁷

ICMEC supports this recommendation.

- d calling for firm judicial management, both at trial and appellate levels, of the progress of return applications.**¹⁸

ICMEC supports this recommendation.

- e calling upon States Parties to enforce return orders promptly and effectively.**¹⁹

ICMEC supports this recommendation.

- f recommending that the “grave risk” defence under Article 13 should be narrowly construed.**²⁰

ICMEC supports this recommendation.

- g proposing any other measures (please specify) to improve the efficiency and speed with which applications are processed and orders enforced.**

ICMEC supports this recommendation. Please see ICMEC’s recommendation in Section (2), Question 3 regarding measures to ensure that Hague applications are dealt with promptly and expeditiously.

the development of greater mutual confidence between legal systems.”

This conclusion was supported by the judges present at the Washington Judicial Conference (footnote 7, above).

¹⁶ See, for example, Conclusion No 2 of the Washington Judicial Conference:

“Prompt decision-making under the Hague Child Abduction Convention serves the best interests of children. It is the responsibility of the judiciary at both the trial and appellate levels firmly to manage the progress of return cases under the Convention. Trial and appellate courts should set and adhere to timetables that ensure the expeditious determination of Hague applications.”

¹⁷ See above, footnote 16.

¹⁸ See above, footnote 16.

¹⁹ See, for example, Conclusion No 4 of the Washington Judicial Conference (footnote 7, above):

“It is recommended that State parties ensure that there are simple and effective mechanisms to enforce orders for the return of children.”

²⁰ See, for example, Conclusion No 5 of the Washington Judicial Conference (footnote 7, above):

“The Article 13 *b* ‘grave risk’ defense has generally been narrowly construed by courts in member states. It is in keeping with the objectives of the Hague Child Abduction Convention to construe the Article 13 *b* grave risk defense narrowly.”

- Knowledge of domestic procedures and the Hague Convention process should be improved in all Hague Convention signatory nations through meetings and educational products, such as the internet, the media and political contacts;
- Police, judicial and court powers should be maximised in order to locate and stabilise children, even when matters are not branded “criminal.” Furthermore, the location process should be monitored for expeditious turnaround;
- Central Authorities of each Hague Convention signatory nation should take a leadership role in strengthening procedures for the enforcement of access rights;
- Central Authorities and trial and appellate judges should adhere to strict timetables (similar to the UK system) to ensure expeditious processing and handling of Hague Child Abduction cases.

8 Please indicate any important developments since 1996 in your jurisdiction in the interpretation of Convention concepts, in particular the following:

- **rights of custody (Article 3 a and Article 5 a);**
- **habitual residence (Article 3 a and Article 4);**
- **rights of access (Article 5 b);**
- **the actual exercise (of rights of custody) (Article 3 b and Article 13 a);**
- **the settlement of the child in its new environment (Article 12);**
- **consent or acquiescence to the removal or retention of the child (Article 13 a);**
- **grave risk (Article 13 b);**
- **exposure to physical or psychological harm (Article 13 b);**
- **intolerable situation (Article 13 b);**
- **fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20).**

(3) Issues surrounding the safe and prompt return of the child (and the custodial parent, where relevant)²¹

1 To what extent are your courts, when considering a return application, entitled and prepared to employ “undertakings” (i.e. promises offered by, or required of the applicant) as a means of overcoming obstacles to the prompt return of a child? Please describe the subject-matter of undertakings required/requested. At what point in return proceedings are possible undertakings first raised, and how?

2 Will your courts/authorities enforce or assist in implementing such undertakings in respect of a child returned to your jurisdiction? Is a differentiation made between undertakings by agreement among the parties and those made at the request of the court?

ICMEC feels that courts/authorities should enforce or assist in implementing undertakings with respect to a child returned to his or her habitual residence, particularly when the child’s welfare is in question. ICMEC believes that

²¹ The context of these questions is the experience of several States that the majority of return applications now concern (alleged) abduction by the child’s primary caretaker, and that these cases often give rise to concerns about supports available for, or even the protection of, the returning child and accompanying parent within the country to which the child is to be returned. The role played by Central Authorities in this context is covered by question 6 of section 1 of the Questionnaire.

courts in the habitual residence should consider and enforce both undertakings by agreement among the parties and those made at the request of court.

- 3 To what extent are your courts entitled and prepared to seek or require, or as the case may be to grant, safe harbour orders or mirror orders (advance protective orders made in the country to which the child is to be returned) to overcome obstacles to the prompt return of a child?**

ICMEC does not support undertakings that are too elaborate. We find that overly detailed undertakings are a tactic utilised by parties to delay enforcement of a return decision and to focus on the long term situation of the child, which is a decision best left to the court of habitual residence. ICMEC feels that reasonable conditions should be used as a means of reassuring the requested court when a child's safety is at issue. ICMEC feels that if conditions or undertakings are involved, they should be enforceable in both jurisdictions. Central Authorities should facilitate prior consultation between courts and parties as appropriate to discuss the reasonableness of the proposed conditions of return.

- 4 Is consideration being given to the possible advantages 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*, in providing a jurisdictional basis for protective measures associated with return orders (Article 7), in providing for their recognition by operation of law (Article 23), and in communicating information relevant to the protection of the child (Article 34)?**

ICMEC maintains that the issue of child protection is being more globally recognised. Child protective issues surface in the form of runaway children, refugee or displaced children, cross-border exploitation or abuse of children, or within the breakdown of international marriages. ICMEC postulates that Articles 7, 23 and 34 of the Hague Convention on the Protection of Children could assist courts handling Hague Abduction Convention cases in formulating a jurisdictional basis for protective measures associated with return orders, in providing for their recognition by operation of law, and in communicating information pertinent to the protection of the child. ICMEC also favours consideration of the Hague Convention on the Protection of Children to enforce access rights.

- 5 Have you experience of cases in which questions have arisen as to the right of the child and/or the abducting parent to re-enter the country from which the child was abducted or unlawfully retained? If so, how have such issues been resolved?**
- 6 Please comment on any issues that arise, and how these are resolved, when criminal charges are pending against the abducting parent in the country to which the child is to be returned.**

In situations in which criminal charges are pending against the abducting parent in the habitual residence country, it is extremely helpful if the requested and requesting Central Authorities communicate and determine whether Hague and extradition proceedings are simultaneously pending. Additionally, the requested country should also co-ordinate with Interpol to ensure that the civil Hague matter is ready to proceed at the time that law enforcement takes the abductor into custody.

ICMEC notes that in many jurisdictions, police powers cannot be invoked without a criminal complaint. ICMEC wishes to explore the possibility for each Contracting State to set up a regime that allows full use of police and Interpol powers in Hague matters even when a criminal offence has not occurred.

ICMEC acknowledges the potentially negative effect of individuals increasingly invoking the Article 13b “intolerable situation” defence when the matter is made a criminal one and the person being prosecuted is the child’s primary caregiver. ICMEC questions whether direct judicial communication and negotiation to explain and/or withdraw arrest warrants or to assure non-prosecution in appropriate cases would avoid increases in Article 13b “intolerable situation” defences.

Finally, ICMEC is aware of cases in which a child has been returned to their habitual residence country through the Hague Convention and pending criminal charges in that country against the original taking parent make it difficult for that parent to exercise his or her access rights to the child. In such situations, ICMEC recommends that Central Authorities co-ordinate to arrange a workable access agreement for the requesting parent.

- 7 Please comment on any experience, as a requesting or as a requested State, of cases in which the deciding judge has, before determining an application for return, communicated with a judge or other authority in the requesting State and, if so, for what purposes. What procedural safeguards surround such communications?**

ICMEC believes that international judicial co-operation in child abduction cases must be improved. ICMEC urges judges in different jurisdictions to communicate directly in certain cases. The concept of appointing liaison judges in different jurisdictions to facilitate communication in international child abduction cases is advocated. Furthermore, ICMEC promotes the continual development of an international network of judges familiar with the Hague Convention to encourage personal contacts and the exchange of information and ideas.

- 8 Has an appointment been made in your country of a judge or other person competent to act as a focus or channel for communication between judges at the international level in child abduction/access cases?²²**
- 9 Where a child is returned to your Country, what provisions for legal aid and advice exist to assist the accompanying parent in any subsequent legal proceedings concerning the custody or protection of the child?**
- 10 Where a custody order has been granted in the jurisdiction of, and in favour of, the left behind parent, is the order subject to review if the child is returned, upon application of the abducting parent?**
- 11 Would you support any of the following recommendations?**
- a that Contracting States should consider ratification of or accession to 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***

²² See footnote 23, below.

of Children, to provide a basis for jurisdiction, recognition and enforcement, and co-operation in respect of measures of protection of a child which are attached to return orders.

ICMEC supports this recommendation.

- b that Contracting States should provide swift and accessible procedures for obtaining, in the jurisdiction to which the child is to be returned, any necessary protective measures prior to the return of the child.**

ICMEC supports this recommendation in principle. At a minimum, ICMEC recommends that Contracting States provide information about various legal and welfare services including social security, legal aid, emergency lodging, or domestic violence shelters which are available in the city or region where the child is asked to be returned. In situations which pose a grave risk of harm to a child upon his or her return to the country of habitual residence, undertakings which assist returns should be encouraged. Undertakings should be limited in scope and should provide the necessities of a safe return, such as accommodation and sufficient maintenance.

- c that Contracting States should take measures to ensure that, save in exceptional cases, the abducting parent will be permitted to enter the Country to which the child is returned for the purpose of taking part in legal proceedings concerning custody or protection of the child.**

ICMEC supports this recommendation.

- d that Contracting States should provide a rapid procedure for the review of any criminal charges arising out of a child's abduction/unlawful retention by a parent in cases where the return of the child is to be effected by judicial order or by agreement.**

ICMEC supports this recommendation.

- e that Contracting States should nominate a judge or other person or authority with responsibility to facilitate at the international level communications between judges or between a judge and another authority.²³**

²³ See, for example, Conclusion No 1 of the "De Ruwenberg I" Judicial Seminar (footnote 7, above):

"The recommendation was made that, following the example of Australia, judges attending the seminar should raise with the relevant authorities in their jurisdictions (e.g., court presidents or other officials, as appropriate within the different legal cultures) the potential usefulness of designating one or more members of the judiciary to act as a channel of communication and liaison with their national Central Authorities, with other judges within their own jurisdictions and with judges in other states, in respect, at least initially, of issues relevant to the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction."

This recommendation was endorsed in Conclusion No 5 of the "De Ruwenberg II" Judicial Seminar (footnote 7, above), as follows:

"The need for more effective methods of international judicial co-operation in respect of child protection is emphasized, as well as the necessity for direct communication between Judges in different jurisdictions in certain cases. The idea of the appointment of liaison Judges in the different jurisdictions, to act as channels of communication in international cases, is supported. Further exploration of the administrative and legal aspects of this concept should be carried out. The continued development of an

ICMEC supports this recommendation. In addition, ICMEC advocates the continual development of an international network of judges in the area of international child abduction to encourage personal contacts and the exchange of information.

- f that the Permanent Bureau of the Hague Conference on Private International Law should continue to explore practical mechanisms for facilitating direct judicial communications, taking into account the administrative and legal aspects of this development.**

ICMEC supports this recommendation. ICMEC recognises that the Permanent Bureau will incur costs and administrative needs to explore the practical mechanisms for facilitating direct judicial communications. For instance, the Permanent Bureau would likely need the help of a research assistant for the preparation of a report and in servicing the experts committee. A questionnaire will need to be developed, consultations will need to be carried out, an experts committee will need to be formed and guided by the Permanent Bureau and preparations would need to be made for the Special Commission. We also recognise that there would be administrative costs, such as sending the experts to attend several meetings at The Hague.

(4) Procedures for securing cross-frontier access/contact between parent and child²⁴

1 What provisions for legal aid/advice/representation in respect of a foreign applicant for an access order exist in your jurisdiction?

Ideally, all States Parties should make efforts to supply cost-effective, experienced and knowledgeable legal counsel to applicants seeking access to their children, regardless of means or merits.

2 On what basis do your courts at present exercise jurisdiction to:

- a grant and
b modify access/contact orders?**

3 What provisions exist for the recognition and enforcement in your jurisdiction of foreign access orders, in particular where the order has been made by a court or other authority of the country of the child's

international network of Judges in the field of international child protection to promote personal contacts and the exchange of information is also supported."

This conclusion was in turn endorsed at the Washington Judicial Conference (footnote 7, above).

Liaison judges have already been appointed for England and Wales, Australia, New Zealand, Hong Kong and Cyprus.

²⁴ The role played by Central Authorities in this context is covered by question 7 of section 1 of the Questionnaire. In answering these questions please distinguish where appropriate between:

- a** applications pending return proceedings;
b applications following a refusal to return a child;
c applications not made in connection with other proceedings; and
d applications to modify existing access orders.

Please note also that the term "access" should be read as including all forms of contact.

habitual residence? In this context is consideration being given to 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*?

- 4 What, if any, provision exists to ensure that cross-frontier access applications (including appeals) are processed expeditiously?**

ICMEC encourages the Central Authorities of each Hague signatory country to take a leadership role in strengthening procedures for the expeditious processing of access applications. If necessary, signatory countries should amend their internal laws to ensure expedited processing of Hague Convention access cases. Central Authorities should educate courts and practitioners that expeditious processing and enforcing of access rights under the Hague Convention will lead not only to a greater level of international comity but also to a higher realm of family continuity.

- 5 What facilities/procedures are in place to promote agreement between parents in international access/contact cases?**

- 6 Do your courts in practice accept a presumption in favour of allowing access/contact to the non-custodial parent?**

- 7 What conditions are likely to be imposed on access in respect of a non-custodial abducting parent?**

- 8 What information concerning services and what other facilities are available to overseas applicants for access/contact orders?**

ICMEC recommends the building of a website in each signatory country to communicate the range of services and facilities available to overseas applicants for access/contact orders. Alternatively, each signatory country could produce and distribute a pamphlet providing the same information.

In addition to the above, ICMEC promotes the idea of utilising an independent body comprised of specialised mediators in every country to facilitate access. ICMEC recommends that non-governmental organisations, rather than the Central Authority, have the capability to organise such mediation. ICMEC views mediation as an important mechanism to restore mutual confidence between separated and divorced parents and to foster mutual trust between the contracting states.

- 9 What problems have you experienced and what procedures exist in your country as regards co-operation with other jurisdictions in respect of:**

- a the effective exercise of rights of access in your/in the other jurisdiction;**
- b the granting or maintaining of access rights to a parent residing abroad/in your jurisdiction;**
- c the restriction or termination of access rights to a parent residing abroad/in your jurisdiction.**

- 10 What, if any, measures are available to your courts to help guarantee adherence by parents to access conditions (e.g. financial guarantees, surrender of passports)?**

ICMEC recommends that courts take one or more of the following measures to help guarantee adherence by parents to access conditions:

- Impose a monetary bond to guarantee compliance;
- Utilise criminal and civil sanctions, including community service, fines and incarceration for non-compliance;
- Modify existing custody orders to give custody to the non-custodial parent (if appropriate);
- Require all passports to be surrendered to the court or to a neutral third party of choice.

11 How in practice are access orders enforced?

12 Would you support recommendations in respect of any of the particular issues raised in the preceding questions? If so, please specify.

Please see Section (4), Questions 1, 4, 8 and 10.

(5) Securing State compliance with Convention obligations

1 Please comment upon any serious problems of non-compliance with Convention obligations of which your authorities have knowledge or experience and which have affected the proper functioning of the Convention.

ICMEC recognises that there are several problems of non-compliance with Hague Convention obligations, which include the following:

- Certain signatory countries do not have implementing Hague legislation, regulatory guidelines or a Central Authority to carry out the responsibilities of the treaty;
- Many signatory countries do not have enforcement mechanisms to carry out return and access orders;
- Some signatory nations greatly delay in processing and resolving Hague cases;
- Some signatory countries experience undue delay in locating children who are the subject of a Hague application;
- Key exceptions provided within the Hague treaty to ensure reason and common-sense have in some cases ceased to be viewed as exceptions and instead become the rule, frequently used as justification for the non-return of children.

2 What measures, if any, do your authorities take, before deciding whether or not to accept a new accession (under Article 38), to satisfy themselves that the newly acceding State is in a position to comply with Convention obligations?

ICMEC feels that all States should be encouraged to work together to address child abduction issues. We acknowledge that not every nation is capable of fulfilling the duties required under the Hague Convention. ICMEC feels that States with incompatible legal systems and ideologies should not join the Hague Convention. For the Hague Convention to work effectively, Member States must have confidence in one another to apply the provisions of the Convention efficiently and fairly. ICMEC therefore feels that the Secretariat should only support a State's accession when they have examined and verified that the State is equipped to implement the Convention and its mechanisms effectively. ICMEC does not support accession to the Hague

Convention for the following:

- States whose systems are incompatible with the basic tenets of the Hague Convention. For example, those who:
 - do not permit the return of certain children (for example, those who are nationals of the requested state);
 - could not award custody of a returned child to one parent (for example, the mother in the case of older boys);
 - have rules forbidding the children from living in another country;
- States who do not have an effective Central Authority before acceding to the Convention. Both the Hague Secretariat and existing party members will need to verify that there are ample social services in place to protect the welfare of abducted children;
- States who do not have an effective legal means to enforce orders made under the Hague Convention.

ICMEC does believe that greater efforts need to be made to forge international links between Hague and non-Hague nations. ICMEC urges Hague Convention signatories to support an international initiative orchestrated by the Permanent Bureau designed to bring representatives of non-Hague and Hague Convention countries together to discuss the issue of child abduction and to identify common ground on which there can be international co-operation.

3 Would you favour the drawing up of a standard questionnaire to be submitted by Contracting States to each newly acceding State with a view to assisting them to decide whether or not to accept the accession? What questions would you include?

ICMEC does favour the drawing up of a standard questionnaire. ICMEC would like to include the following questions for Contracting States to submit to each newly acceding State to determine whether or not to accept the accession:

- Does the newly acceding State have a designated Central Authority with ample staff needed to carry out the duties of the Hague Convention?
- Does the newly acceding State need implementing legislation to fulfil the obligations of the Convention? If so, has the legislation been drafted and passed?
- What enforcement mechanisms are in place to carry out return and access orders issued under the Hague Convention?
- What type of legal system and ideology does the newly acceding State have? Specifically, do any constitutional, procedural or other laws present obstacles to the effective implementation of the Hague Convention?
- Can the concepts contained in the Practice Guides (Please see Section (5), Question 4) be implemented within the legal system of your State?

4 Are you in favour of an increase in the number of Special Commissions²⁵ (or similar meetings) to review the practical operation

²⁵ All other things being equal, the approximate additional expenses arising for the annual budget of the

of the Convention? Would you also favour the idea that additional Special Commissions should review particular aspects of the operation of the Convention (for example, the problems surrounding the protection of rights of access, or the issues that arise when allegations of abuse or domestic violence are raised in return proceedings or the practical and procedural issues surrounding direct communications between judges at the international level, or the enforcement of return orders by Contracting States)?

ICMEC is in favour of an increase in the number of Special Commissions or similar meetings to review the practical operation of the Convention.

ICMEC also recommends that the Permanent Bureau produce and promote Practice Guides to assist in the implementation and operation of the Convention. The production of these guides would build upon recognised best practices under the Convention and would provide a framework for consistent and effective application of the Convention. The practices identified and included in the guides would not be legally binding upon signatory countries, but would serve as guidance to countries based upon research and the advice of experts in order to help ensure the most effective process possible.

The development of such Practice Guides would involve three stages: comparative research and consultations, meetings of expert committees to develop drafts and consideration of the drafts by a future Special Commission. The process would be organised by the Permanent Bureau. To make this proposal a reality, we recommend its adoption by the Fourth Special Commission at The Hague in March 2001. The ICMEC is committed to assisting in any way possible in this effort and promises its support in advancing this important goal.

5 Are there any other measures or mechanisms which you would recommend:

- a to improve the monitoring of the operation of the Convention;**
- b to assist States in meeting their Convention obligations;**
- c to evaluate whether serious violations of Convention obligations have occurred?**

(6) Miscellaneous and general

1 Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning of the Convention, and on the funding of such activities?²⁶

Hague Conference would amount to Dfl. 30,000 (for an additional Commission of 3 days every 2 years), or Dfl. 20,000 (every 3 years).

²⁶ The present activities of the Permanent Bureau fall into the following categories:

- a* assisting in the maintenance of good communications between Central Authorities, by inter alia seeking and disseminating (through the Hague Conference website and other means) reliable contact data;
- b* giving informal advice and assistance to Central Authorities and others on matters of interpretation and procedure under the Convention;
- c* drawing the attention of States Parties to, and offering advice about, situations in which obstacles have arisen to the proper functioning of the Convention;
- d* offering advice of a general nature and referrals in individual cases;
- e* advising Contracting States in relation to implementation of the Convention;

ICMEC proposes that the Permanent Bureau develop a number of Practice Guides to assist States Parties in implementation of the Convention and to promote the adoption of consistent and effective practices with regard to a number of key operational areas such as the judicial process, Central Authority procedures and prevention procedures. ICMEC recognises that the Permanent Bureau will require additional staff and funding to produce Practice Guides. ICMEC is committed to assisting in any way possible in this effort and promises its support in advancing this important goal.

In addition, ICMEC suggests that the Permanent Bureau compile and distribute an annual publication on the Hague Convention, consisting of information relevant to all States Parties such as the number of Hague applications filed, which countries were involved, the age of the children involved and the length and outcome of each resolved case.

2 Are there any additional ways in which the Permanent Bureau might provide assistance? Do you favour the preparation of a list of potential Permanent Bureau functions and tasks that could only be performed if the Permanent Bureau were to receive additional financial and human resources either through approval of an increased budget or through voluntary contributions to accounts set aside for that purpose?

ICMEC recommends that the Permanent Bureau produce and promote Practice Guides to assist in the implementation and operation of the Convention.

ICMEC supports the preparation of a list of potential Permanent Bureau functions and tasks that could only be performed if the Permanent Bureau were to receive additional financial and human resources.

3 Would you favour a recommendation that States Parties should, on a regular annual basis, make returns of statistics concerning the operation of the Convention on the standard forms established by the Permanent Bureau, and that these statistics should be collated and made public (for example on the Hague Conference website) on an annual basis?

ICMEC supports this two-fold recommendation.

4 Would you favour a recommendation supporting the holding of more judicial and other seminars, both national and international, on the subject-matter of the Convention?

ICMEC supports this recommendation. It would also be beneficial for

f organizing and supporting training conferences and seminars for judges, Central Authority personnel and practitioners;

g gathering and evaluating statistics;

h maintaining INCADAT (the international child abduction database of judicial decisions, available at: www.incadat.com);

i undertaking preparation and research for the regular periodic reviews of the Convention;

j the publication of a judicial newsletter as a step towards building an international judicial network;

k encouraging wider ratification of the Convention.

With respect to many of these activities, no provision is made in the regular budget of the Hague Conference. They therefore depend largely or entirely on extra budgetary funding.

practitioners, social workers, law enforcement officials and policy makers to have education on Hague Convention issues through some type of national and/or international annual conference.

5 Are there any particular measures which you would favour to promote further ratifications of and accessions to the Convention?

Knowledge of the purpose, application and benefits of the Hague Convention should be improved through meetings and educational products, such as the internet, media and political contacts. Increased exposure to the Hague Convention may influence non-party countries to ratify and accede to the Convention more rapidly. Nevertheless, it must be stated that ICMEC is more inclined to put a hold on new accession until the Permanent Bureau produces Practice Guides to assist States Parties in proper implementation of the Convention.

6 Please provide information concerning any bilateral arrangements made with non-Hague States with a view to achieving all or any of the objectives set out in Article 1 of the Convention.

ICMEC is aware that Canada, France and other European countries have successfully entered into bilateral arrangements with non-Hague States, particularly in the area of exercising access rights. Overall, ICMEC feels that bilateral arrangements are very positive as long as they do not conflict with the tenets of the Hague Convention. ICMEC does acknowledge and support the obligation under Article 11 of the United Nations Convention on the Rights of the Child for Member States to “promote the conclusion of bilateral or multilateral agreements,” to “combat the illicit transfer and non-return of children abroad,” and under Article 35 to “take all appropriate national, bilateral, and multi-lateral measures to prevent the abduction.”

7 Do you have any comments on the following proposition:

“Courts take significantly different approaches to relocation cases, which are occurring with a frequency not contemplated in 1980 when the Hague Child Abduction Convention was drafted. Courts should be aware that highly restrictive approaches to relocation can adversely affect the operation of the Hague Child Abduction Convention.”²⁷

²⁷ Conclusion No 9 of the Washington Judicial Conference (footnote 7, above). A “relocation” case is one in which a custodial parent applies to a court for permission to move permanently, together with the child, to a new country.