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The Judges' Newsletter

on International Child Protection

Special Focus

The Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention

10-17 October 2023

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Participants to the Eighth Meeting of the Special Commission (SC) on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention (10-17 October 2023), The Hague Academy of International Law (Peace Palace, The Hague)

Foreword

This edition of the Judges' Newsletter on International Child Protection is dedicated to the Conclusions and Recommendations (C&Rs) adopted during the Eighth Meeting of the Special Commission (2023 SC) on the practical operation of the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (1980 Child Abduction Convention or 1980 Convention) and the *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* (1996 Child Protection Convention or 1996 Convention), which took place from 10 to 17 October 2023.

This Judges'Newsletter provides context and insight into the background of the discussions during the 2023 SC that ultimately led to the language of the adopted C&Rs.

In order to facilitate the work of delegations participating in the 2023 SC, the Permanent Bureau of the HCCH (PB) prepared three types of documents. Preliminary Documents (Prel. Docs) were prepared to provide a degree of analysis on certain issues to be discussed at the meeting and to provide some suggestions for possible C&Rs, to serve as a starting point for discussions. These Prel. Docs are publicly available on the specialised SC site on the HCCH website (please click here). A number of Working Documents (Work. Docs) were prepared by the PB in advance of the 2023 SC, in order to assist participants by providing all relevant extracts from Conventions and accompanying documentation (*i.e.,* Explanatory Reports, Practical Handbook, Guides to Good Practice), responses to questionnaires, as well as existing C&Rs and relevant jurisprudence. Work. Docs were also submitted prior to and during the course of the 2023 SC by the PB and delegations, in order to facilitate discussions and make proposals. Information Documents (Info. Docs), shared with participants prior to and during the meeting, were not intended for discussion but rather aimed to provide delegates with additional details and context pertaining to a wide variety of topics. Info. Docs included, but were not limited to, input from observers and are publicly available on the HCCH website. The Work. Docs submitted in advance of, and during, the 2023 SC were made available only to delegates via the secure portal of the HCCH website. As such, unlike Prel. Docs and Info. Docs, they are not publicly available.

This Newsletter follows the structure of the agenda of the SC and, as a result, the C&R document, which can be found on the specialised SC site on the HCCH website (please click here).

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Special Focus

Conclusions & Recommendations adopted during the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention.

I. Contracting Parties to the 1980 Child Abduction Convention

1. The SC welcomed the five new Contracting Parties to the 1980 Child Abduction Convention for which the Convention entered into force since the 2017 Seventh Meeting of the SC (2017 SC) namely, Barbados, Botswana, Cabo Verde, Cuba, and Guyana, bringing the total number of Contracting Parties to the Convention to 103. The SC encouraged States that have not yet joined the 1980 Child Abduction Convention to do so.

2. The SC reminded newly acceding States of their obligation to designate a Central Authority. They were also reminded of the need to complete the Standard Questionnaire for Newly Acceding States and to complete the Country Profile in order to facilitate the acceptance of their accession.

After the election of the co-Chairs, welcome and introductory remarks, the presentation of the documentation available to participants and the adoption of the agenda, the 2023 SC welcomed the States that became parties to the 1980 Convention since the Seventh meeting of the Special Commission in 2017 (2017 SC).

The 2023 SC unanimously reaffirmed the C&Rs from its previous meetings, as set out in Prel. Doc. No 1 of October 2022, which provided a "Draft Table of Conclusions and Recommendations of previous Meetings of the Special Commission (SC) on the practical operation of the 1980 Child Abduction and the 1996 Child Protection Conventions that are still relevant today".

II. Evaluating and taking stock of the 1980 Child Abduction Convention

3. The SC acknowledged the responses to the Questionnaire on the practical operation of the 1980 Child Abduction Convention which confirmed that, in general, the Convention is operating effectively.

4. The SC reaffirmed the utility of accurate statistics for the effective evaluation of the operation of the 1980 Child Abduction Convention and welcomed the statistical study of cases under the Convention for the year 2021 (Prel. Docs Nos 19A and 19B) compiled by Nigel Lowe and Victoria Stephens. To this end, the SC noted that the data from 2021 seem likely to have been affected by the COVID-19 pandemic. The SC noted the increase in the average number of days it took to reach a final decision, the increase in the proportion of refusals to return, the small decrease in the proportion of cases going to court, the increase in the proportion of cases being settled outside court,

and that the proportion of refusals to return on the basis of the Article 13(1)(b) exception had almost doubled compared with the results of the 2015 statistical study. The SC expressed its thanks to the People's Republic of China, Germany, the Philippines and the United Kingdom, the International Centre for Missing and Exploited Children (ICMEC), and the US Friends of the Hague Conference Foundation for their kind voluntary financial contributions to the statistical study.

This agenda item aimed to provide participants of the 2023 SC with information on the status of the 1980 Convention since the 2017 SC.

New Contracting States to the 1980 Convention and responses to the Questionnaire on the 1980 Convention.

Since the 2017 SC, five States acceded to the 1980 Convention, namely in chronological order, Cuba, Guyana, Barbados, Cabo Verde and Botswana, bringing the total number of Contracting States to 103. It was further noted that, presently, there are 54 States who are Contracting States to both the 1980 Convention and 1996 Convention.

The SC encouraged new Contracting States that acceded to the 1980 Convention to designate Central Authorities and to complete the *Standard Questionnaire for Newly Acceding States* and the Country Profile.

The PB presented some key findings from the responses received to the 2023 Questionnaire on the practical operation of the 1980 Convention (Questionnaire on the 1980 Convention). Although issues regarding the implementation of the 1980 Convention appear to be continuously improving, some ongoing challenges persist, namely issues pertaining to delays in return proceedings, discovering the whereabouts of children and issues in achieving the most effective and efficient cooperation between authorities. According to the responses to the questionnaire, some ways to support the implementation of the Convention could include the concentration of jurisdiction, specialised training for judges and electronic case management systems.

2021 Statistical Study

Nigel Lowe QC (Hon), Emeritus Professor of Law (Cardiff University) & Victoria Stephens, Freelance Research Consultant (Lyon, France)

This is the fifth research study on the operation of the 1980 Convention conducted by Professor Nigel Lowe and Mrs Victoria Stephens, which builds on the findings of previous studies conducted in 1999, 2003, 2008 and 2015 to provide an analysis of statistical trends over a 22- year period. Professor Lowe presented the global and regional reports on the *Statistical Study of applications made in 2021 under the 1980 Convention*.

As in previous studies, the 2021 study was based on information provided by Central Authorities in response to a questionnaire, particularly in relation to the number of applications received, the "taking persons" (*e.g.,* their relationship with the child / children) in return applications and the "respondents" in access applications, the children involved (*e.g.,* their age and the number of children involved in each case), the outcomes of the applications, and the length of time it took to reach a final outcome. Since CGAP mandated the discontinuation of INCASTAT at its 2021 meeting (C&D No 19), the questionnaire for this study was created in Excel format, at the request of Central Authorities.

The study relied on data from 71 Central Authorities, of the 101 Contracting States to the 1980 Convention in 2021 and, as was done in the previous four studies, analysed case outcomes up

to June 2023 so as to allow for 18 months to elapse after the last possible application could have been received (*i.e.,* on 31 December 2021). Detailed information was provided on a total of 2,579 incoming applications, comprising 2,180 return and 399 access applications. It is estimated that these figures capture 94% of all applications sent and received in 2021 under the 1980 Convention.

For the first time, information was requested on the overall number of applications in the years preceding and following the year of study (*i.e.,* 2019, 2020 and 2022) in order to assess the impact of the COVID-19 pandemic on the number of applications received and sent in each year.

Making a direct comparison with the 2015 study (that is by comparing data from 2021 to data from 2015 only in relation to the States that responded to both studies) there has been a 4% decrease in return applications and a 1% increase in access / contact applications, but this finding should be treated with some caution, as the 2021 figures seem likely to have been affected by the COVID-19 pandemic. Taking into account the possible effect of COVID-19, this 4% decrease may show the result of the deterrent effect of the 1980 Convention on child abductions. Nevertheless, as in previous studies, it remains the case that the vast majority of applications (85%) made under the 1980 Convention in 2021 were for return, with 15% of applications being for access / contact.

When it comes to return applications, 75% of taking persons were mothers, a higher proportion than the 73% recorded in 2015, 69% in 2008, 68% in 2003 and 69% in 1999. In 2021, 23% of the taking persons were fathers and the remaining 2% were grandparents, institutions or other relatives. Where the information was available, the large majority (88%) of taking persons were the primary carer or joint primary carer of the child. Where the taking person was the mother, this figure was 94% and where the taking person was the father this figure was 71%.

At least 2,771 children were involved in the 2,180 return applications, making an average of 1.3 children per application. A large majority of applications (74%) involved a single child. The average age of a child involved in a return application was 6-7 years.

The overall return rate was 39%, lower than previous studies, with 45% in 2015, 46% in 2008, respectively, 51% in 2003 and 50% in 1999. This return rate comprised 16% voluntary returns and 23% judicial returns.

In 2021, 38% of return applications were decided in court (43% in 2015, 44% in 2008, 44% in 2003 and 43% in 1999). Of those court decisions, 59% resulted in a judicial return order being made compared to 65% in 2015, 61% in 2008, 66% in 2003 and 74% in 1999. In addition, 281 return applications (13% of the overall total and 35% of those determined by a court) ended in a judicial refusal. Some cases were refused on more than one ground. The most frequently relied upon ground for refusal was Article 13(1)(b), cited in 46% of refused applications.

Generally, return applications were resolved more slowly in 2021, compared with the 2015 study. The overall average time taken to reach a final outcome from the receipt of the application by the Central Authority was 207 days, compared with 164 days in 2015 and 188 days in 2008.

Of the cases decided in court, 42% of return applications involved an appeal, compared with 31% in 2015 and 24% in 2008. In 81% of the return applications, the same outcome was reached on appeal as at first instance, compared with 67% in 2015 and 80% in 2008.

As concerns applications for access, in the 399 access applications made under Article 21 of the 1980 Convention in 2021, 78% of respondents were mothers (74% in 2015, 79% in 2008, 79% in 2003 and 86% in 1999). At least 484 children were involved in the 399 access / contact

applications received in 2021, making an average of 1.2 children per application. 74% of access / contact applications concerned a single child and the overall average age of a child involved was 8 years.

The overall rate at which access / contact was agreed or ordered was 27%, compared with 27% in 2015, 21% in 2008, 33% in 2003 and 43% in 1999. Access / contact applications took longer to resolve than return applications. The average time taken to reach a final outcome was 301 days from its receipt by the Central Authority, 252 days if there was a voluntary agreement for access / contact, 358 days if access / contact was judicially ordered and 333 days if access / contact was refused. These timings can be compared with 254 days in 2015, and 339 days in 2008.

The addendum to the 2021 study explored whether and to what extent the COVID-19 pandemic had an impact on the applications made under the 1980 Convention. 2021 was a COVID year, when lockdowns were still common, international travel was restricted and courts were, to varying degrees, coming to terms with conducting entirely or partially remote hearings. Nevertheless, feedback received from Central Authorities was to the effect that 2021 was not an untypical year insofar as applications under the 1980 Convention were concerned. It is, therefore, debatable whether and to what extent the findings of the 2021 study were impacted by the COVID-19 pandemic or whether they reflect the continuation of the trend trajectory of the previous studies.

The consistent finding across all the studies is that the large majority of applications made under the 1980 Convention are for return rather than for access / contact. The 2021 study's finding that 85% of applications are for the child's return is in line with this. This being said, for the first time, the number of return applications fell and those for access / contact rose when compared to the 2015 study. So far as the number of applications is concerned, the pandemic seems to have had some effect in that numbers dropped from those recorded in 2019 and started to rise in 2021 and again in 2022.

The two busiest Central Authorities have always been the USA, England and Wales and that continued to be the case in 2021. As in 2015, Germany was the third busiest but, whereas the fourth and fifth busiest Central Authorities in 2021 were France and Mexico, it was the other way around in 2015.

A more detailed analysis can be found in the report (posted on the HCCH website (www.hcch.net) under "Child Abduction" then "Statistics"), which comprises a Global Report, three Regional Reports and a number of National Reports.

The PB would like to extend their sincere appreciation to all the Central Authorities of participating Contracting States for dedicating their invaluable effort and time to complete the questionnaire and answering subsequent queries.

The PB would also like to thank the People's Republic of China, Germany, the Philippines and the United Kingdom, the International Centre for Missing and Exploited Children (ICMEC) and the US Friends of the Hague Conference Foundation for their kind voluntary contributions to this study.

Table of C&Rs from previous meetings of the Special Commission

At the 2017 SC, the PB introduced a "Table of Conclusions and Recommendations of previous Meetings of the Special Commission (SC) on the 1980 Child Abduction Convention and the 1996 Child Protection Convention" (Prel. Doc. No 6 of July 2017). The objective of this document was to provide Contracting Parties with a compilation of C&Rs from past SC meetings that continue to be pertinent and useful to bring to the attention of delegates as they conduct their preparations for the upcoming meeting. The document proved very useful in the context of the 2017 SC, as it ensured that all experts were cognisant of issues already

discussed and concluded at previous SC meetings. It was, therefore, agreed that this document be updated in the light of the C&Rs of the 2017 SC in order to be used in preparation for, and during, the 2023 SC. The Prel. Doc. was updated and subsequently circulated to Members and Contracting States for comments, before being posted on the specialised 2023 SC site on the HCCH website a year in advance of the 2023 SC (Prel. Doc. No 1 of October 2022).

In addition to being helpful for the purposes of SC meetings, this document is also an extremely useful and practical tool for both existing and new Contracting States with regard to their daily application and practical operation of the 1980 and 1996 Conventions. Contracting States, Central Authorities, competent authorities and legal practitioners are encouraged to consult this document.

III. Addressing delays under the 1980 Child Abduction Convention

1. Impact of the COVID-19 pandemic on the 1980 Child Abduction Convention, in particular the use of information technology

5. The SC reiterated the effectiveness and value of the use of information technology for efficient communication between authorities, sharing of data, and to assist in reducing delays and expedite return proceedings, noting in particular the improvements reported by Contracting Parties following the COVID-19 pandemic.

6. The SC noted that the use of information technology has contributed to facilitating access to, and participation in, proceedings.

7. The SC further noted the benefits of the use of information technology in facilitating arrangements for organising or securing the effective exercise of rights of access / contact.

8. The SC encouraged States to continue implementing and enhancing the use of information technology in proceedings falling within the scope of the 1980 Child Abduction Convention where appropriate.

9. The SC encouraged States to make use of the Guide to Good Practice on the Use of Video-Link under the 1970 Evidence Convention[1] as a helpful resource for obtaining information about the use of video-link technology.

According to the responses to the Questionnaire on the 1980 Convention (Prel. Doc. No 7), although some States were already utilising information technology in their processes, some improvement was noted in its use because of the COVID-19 pandemic. It was highlighted that the use of technology can be valuable in enabling efficient communication, sharing data, and can help reduce delays and expedite processes, as well as assist with organising and securing the effective exercise of rights of access / contact. Use of information technology can enhance participation in proceedings, including participation by children, where appropriate and in a child friendly manner. The *Guide to Good Practice (GGP) on the Use of Video-Link under the Evidence Convention* was underlined as a helpful tool in this regard.

[1] Available on the HCCH website at www.hcch.net under "Evidence Section", then "HCCH Publications".

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2. Delays under the 1980 Child Abduction Convention

10. The SC emphasised that delays continue to be a significant obstacle in the operation of the 1980 Child Abduction Convention.

11. The SC reiterated C&R No 4 of the 2017 SC and strongly recommended Contracting Parties experiencing delays to review their existing processes in order to identify potential causes of delays. In doing so, Contracting Parties are encouraged to implement any necessary adjustments in order to expedite proceedings and make them more efficient, in accordance with Articles 2 and 11 of the 1980 Child Abduction Convention.

12. The SC reminded Contracting Parties that the July 2023 revised versions of Prel. Docs Nos 10B and 10C of the 2017 SC are helpful tools for consultation by States' authorities tasked with the review of their implementation measures, as these documents describe the procedures adopted by some States to reduce delays and provide recommended good practices to address them.

Given the importance of expeditious procedures to the effective operation of the 1980 Convention, achieving prompt action has repeatedly been addressed at meetings of the SC and the 2023 SC was no different in this regard.

The prompt and effective resolution of return applications under the 1980 Convention is fundamental to ensuring the best interests of the child. Delays in the resolution of applications may have adverse effects on the child(ren) involved, as they contribute to instability and unpredictability.

The drafters of the 1980 Convention established an urgent mechanism for return, which can only meet the 1980 Convention's goals if applied efficiently, without significant delays. Article 11 of the 1980 Convention creates a presumption that a case is delayed if a decision is not made within six weeks from the date of initiation of the proceedings. Nonetheless, delays in the resolution of return applications persist in many Contracting States. Such delays have significant human rights implications and, in some cases, can constitute violations of (international) treaty obligations.

Back in 2017, the SC welcomed the development of Prel. Docs Nos 10 A, 10 B and 10 C, which aimed to address the problem and compiled the various tools developed by the HCCH as well as the procedures implemented by some States towards delay reduction. Following the 2017 SC, the PB updated Prel. Docs Nos 10 A and 10 C in accordance with the discussions that took place. The final versions of these documents were posted on the HCCH website in order to serve as tools for States' authorities to consult when reviewing their implementing measures under the 1980 Convention.

In preparation for the 2023 SC, the PB published Prel. Doc. No 12 of August 2023. The document aimed to analyse the responses to the Questionnaire on the 1980 Convention, to examine the data pertaining to application processing timeframes in the 2021 Statistical Study and compare that data with data from previous Statistical Studies in order to assess the challenges of procedural delays. The Prel. Doc. also made some suggestions for C&Rs for the consideration of the 2023 SC.

Question 7 of the Questionnaire on the 1980 Convention asked States whether they had encountered delays in four notable phases of the return process, namely the Central Authority phase, the judicial phase, the enforcement phase and the mediation phase. States were also asked to share any measures or procedures they had implemented to address them.

The Central Authority phase

States reported that, at the Central Authority level, applicants face difficulties when completing the return form (some Central Authorities assist applicants with completing the forms and others do not). Another challenge appears to lie in the fact that applications sometimes lack the necessary supporting documentation or are not accompanied by the necessary translation. To resolve the issues pertaining to completing and filing the applications, some Central Authorities have enlisted the services of organisations such as the International Social Service (ISS) to assist applicants. In doing so, applicants can benefit from the assistance of lawyers with expertise in the area. Other Central Authorities have made it possible for applicants to submit their applications and any supporting or additional documentation electronically.

Another challenge reported at the Central Authority level is locating the whereabouts of the child. Difficulties in this regard can result in significant delays. Some States reported that the use of local databases that facilitate the search for, and location of, children has been helpful.

States reported that the practice of not designating a specific official for each case not only leads to delays but can also be confusing for the requesting Central Authority in the other State and can pose difficulties in the follow-up of cases. Some Central Authorities have, thus,

begun designating a specific official to be in charge of all communications and processes pertaining to a particular case as soon as a request is received.

Finally, it has also been reported that some Central Authorities experience delays in response times throughout the application procedure. Addressing this issue is a mostly internal matter but some States have suggested incorporating (existing) practical guidelines that outline timelines within which Central Authority officials ought to carry out their duties. European States highlighted the usefulness of Article 23 of the Brussels IIb Regulation which obliges the requested Central Authority to act with urgency in processing requests (authorities must acknowledge receipt of a request within five working days) and creates a duty for Central Authorities to promptly inform their counterpart of the initial steps that have been, or will be, taken to process the request.

The judicial phase

According to responses received to question 7 of the Questionnaire on the 1980 Convention, a challenge that arises at the judicial phase of the return application is a lack of specific internal procedures in some States to facilitate the resolution of cases by competent authorities within six weeks. States reported that due to such a lack of specific procedures in place, proceedings tend to be rather lengthy, with multiple instances of appeal and there is a lack of specialisation among courts, judges and other actors involved. States that have specific internal procedures in place have done so in the form of enacting procedural laws, court regulations or soft law instruments. Such procedures limit the number of appeals that can be made and establish various deadlines for hearings and the various actors involved. Other States have reported that concentration of jurisdiction is very helpful in this regard.

To improve administrative issues, States have reported efforts to implement or improve record-keeping processes and efforts to improve the prioritisation of cases (*e.g.,* prioritising return application hearings over other hearings, both at first instance and appellate levels).

Another important challenge reported by States pertains to the (mis)interpretation of the 1980 Convention and the lack of training for judges, lawyers and other actors. According to States, it appears that there is insufficient distinction between the concepts of return and custody, which leads competent authorities to conduct comprehensive best interests assessments in the context of return cases, which then results in undue delays (this topic was also addressed separately during the 2023 SC, see section IV.1 below). To improve the interpretation of the 1980 Convention by relevant actors, States have conducted trainings for judges and lawyers (sometimes in coordination with the HCCH) and have issued informative documentation on specific topics (*e.g.,* the duty to act expeditiously and the functions and role of the IHNJ). It was also reported that some Central Authorities publish information on the 1980 Convention on their websites in order to enhance accessibility to the general public within their jurisdiction.

The mediation phase

In order to avoid delays in the mediation phase of a return application, it has been reported that States are contemplating the use of videoconferencing to enable virtual participation by parties who are unable to participate in mediation proceedings in person. Efforts also appear to have been made by some States to ensure that mediation services are provided free of charge to those applicants who do not have the means to cover such costs.

The enforcement phase

Although this matter has been extensively addressed in a specific Guide to Good Practice (GGP) published by the HCCH, the issue of delays at the enforcement phase continues to present major challenges. Responses to the Questionnaire on the 1980 Convention indicate that the main causes for delays at this stage can be a lack of collaboration between the parties, insufficient cooperation between the relevant authorities and the high costs of return, which sometimes cannot be covered by the parties, rendering the judgment unenforceable.

Some States have tried to resolve delays at this stage by engaging local enforcement agencies. This includes, for instance, having direct contact with specialised prosecutors' offices or courts that are in charge of enforcement with consular services that issue travel documents and having direct contact with criminal judicial authorities in order to alert them when a child cannot be located. Some States noted that the assistance of Central Authorities can provide courts with more effective and efficient enforcement of return decisions. Finally, the use of short deadlines and the inclusion of specific provisions in the return order, including police enforcement clauses, seem to be helpful in achieving compliance with the return decision.

Statistics

The 2021 Statistical Study shows that the time taken to process cases under the 1980 Convention has increased over the years.

Average duration of cases from the initiation of the proceedings before the Central Authority to the final decision or agreement to return or not to return

	2008	2015	2021
Total duration of cases (average in days)	188	164	207

Central Authority phase

	2008	2015	2021
Central Authority phase (average in days)	76	93	81

Judicial phase (including both instances)

	2008	2015	2021
Cases in Court (average in days)	153	125	151

The numbers above illustrate that the average time taken to resolve cases is still far from the six-weeks suggested by the 1980 Convention. In fact, the figures from 2021 appear be the highest recorded, exceeding the figures from the 2008 Statistical Study.

Looking at these figures, it is worth recalling that every day counts when it comes to processing cases under the 1980 Convention. Delays may have a range of adverse effects on the child, their parents and extended family members but also on the outcome of the case itself.

Delays can also make it more difficult for judges to implement the provisions of the 1980 Convention. The passage of time complicates the assessment and application of key concepts under the Convention, such as habitual residence, grave risk and settlement. Long proceedings may also raise questions about the jurisdiction of authorities of the State of habitual residence to decide the merits of the case. In addition to the initial disruption and conflict a wrongful removal can create in the life of a child, long, drawn out proceedings with multiple levels of appeal may further traumatise them.

During the 2023 SC, it was acknowledged that persisting delays in the processing of return applications under the 1980 Convention remain the main obstacle to the efficient operation of the Convention and that it is crucial to continue reassessing solutions to expedite the processing of return applications while maintaining efficiency and safeguarding due process. It was noted that the GGP Part I on Central Authority Practice and the GGP Part II on Implementing Measures provide some helpful guidance in this regard.

In Prel. Doc. No 12 of August 2023, the PB suggested establishing two Working Groups (WG), one to develop a model written procedure for handling Convention applications for caseworkers and another (mainly comprised of judges) to develop a short model guide to court practice. However, there was no consensus among delegates to establish either of those WGs. Although there was no objection to the development of the aforementioned model guides, there was a preference to focus, and perhaps build upon, existing resources.

IV. Relationship of the 1980 Child Abduction Convention with other international instruments – 1989 UN Convention on the Rights of the Child (UNCRC)

1. Best interests of the child

13. The SC recalled that it is in the best interests of the child to be protected internationally against their wrongful removal or retention (*i.e.*, international child abduction). The abduction of a child is wrongful when in breach of rights of custody. A parent who shares or does not have rights of custody should, therefore, seek and obtain consent from any other person – usually the other parent –, institution or body having rights of custody or, if this is not possible, permission from the court, before removing the child to, or retaining them in, another State (para. 13 of the *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part VI – Article 13(1)(b)* (GGP on Article 13(1)(b)[2]).

14. The SC underlined that in the case of a wrongful removal or retention, it is in principle in the best interests of the child to be returned to their State of habitual residence, as expeditiously as possible, save for the limited exceptions provided for in Articles 12, 13 and 20 of the 1980 Child Abduction Convention. These exceptions, however, must be applied restrictively. While the exceptions derive from a consideration of the interests of the child, they do not turn the return proceedings into custody proceedings. Exceptions are focussed on the (possible non-) return of the child. They should neither deal with issues of custody nor mandate a full "best interests assessment" for a child within return proceedings (para. 26 of the GGP on Article 13(1)(b)).

15. The SC recognised that as a rule, the courts of the child's State of habitual residence are best placed to determine the merits of a custody dispute (which typically involves a comprehensive "best interests assessment") as, inter alia, they generally will have fuller and easier access to the information and evidence relevant to the making of such determinations. Therefore, the return of the wrongfully removed or retained child to their State of habitual residence not only restores the status quo ante, but it allows for the resolution of any issues related to the custody of, or access to, the child, including the possible relocation of the child to another State, by the court that is best placed to assess effectively the child's best interests.

[2] Available on the HCCH website at www.hcch.net under "Child Abduction Section", then "HCCH Publications".

This agenda item was accompanied by a Work. Doc. which cited the first two paragraphs of the Preamble and Article 1 of the 1980 Convention. These provisions clarify the objects of the Convention, which is to secure the prompt return of children who have been wrongfully removed or retained, to protect them from the harmful effects of such wrongful removal or retention and to ensure that rights of custody and access are effectively respected across borders, always bearing in mind that the best interests of children are of paramount importance in matters relating to their custody.

The Work. Doc. also cited the relevant provisions of the 1989 United Nations Convention on the Rights of the Child (UNCRC), namely Articles 3, 9, 10 and 11, and made reference to paragraphs 23 – 25 of the Explanatory Report on the 1980 Convention as well as to paragraphs 13 – 15 and 24 – 26 of the GGP Part VI on Article 13(1)(b). Also relevant to discussions under this agenda item was C&R No 17, adopted during the Seventh Meeting of the SC in 2017 and C&R Nos 15 – 16 adopted at the 2nd Inter-American Meeting of Central Authorities and International Hague Network Judges on International Child Abduction in March 2017. Extracts from relevant jurisprudence on the best interests of the child in the context of 1980 Convention proceedings were also included in the Work. Doc., as were the views adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 121/2020 (Adopted by the Committee at its ninetieth session (3 May–3 June 2022)), available here. Based on the aforementioned resources provided, and to facilitate discussions during the SC, the PB made some suggestions for C&Rs in the Work. Doc.

During discussions, delegates underlined that courts in the State to which the child was removed should not undertake a comprehensive assessment of the best interests of the child and that, in most cases, the courts in the child's State of habitual residence are better placed to make such an assessment, as they have fuller and easier access to relevant information and evidence. Unless the factual circumstances of the case trigger one or more of the exceptions under Articles 12, 13 and 20 of the 1980 Convention, the child should be returned to their State of habitual residence in order for the courts in that State to fully assess the situation and best interests of the child.

The intention behind this agenda item was to spotlight some important extracts from the GGP Part VI on Article 13(1)(b) by citing that language in C&Rs for judges and parties to have recourse to, when needed. The C&Rs proposed by the PB in the Work. Doc. were unanimously adopted by the 2023 SC without amendments.

2. 2011 Optional Protocol to the UNCRC on a Communications Procedure

16. The SC noted communication No 121/2020 of the UN Committee on the Rights of the Child under the Optional Protocol on a Communications Procedure in which the Committee expressed the view that, in cases of the international return of children, it is not the role of the Committee to decide whether the 1980 Child Abduction Convention was correctly interpreted or applied by national courts, but rather to ensure that such an interpretation or application is in accordance with the obligations established by the UNCRC.

17. The SC also noted that the UN Committee on the Rights of the Child recognises that the objectives of the 1980 Child Abduction Convention – prevention and immediate return – seek to protect the best interests of the child. The SC furthermore observed that the Committee noted that the 1980 Child Abduction Convention

> establishes a strong presumption that the best interests of the child require that they be immediately returned save for the limited exceptions provided for in Articles 12, 13 and 20 of the Convention, which should be interpreted and applied restrictively and not include a comprehensive "best interests assessment".

In a Work. Doc., the PB shared a summary and relevant extracts from Communication No 121/2020 of the UN Committee on the Rights of the Child under the 2011 Optional Protocol on a Communications Procedure (OP3), namely paragraphs 7.4, 8.3, 8.4 and 8.6. In addition, relevant provisions from the 1980 Convention (Preamble and Arts 1 - 2), the UNCRC (Arts 3 and 9 – 11) and from OP3 (Arts 5 – 8 and 10 – 11) were also included. Based on the foregoing, and to facilitate discussions during the SC, the PB also made suggestions for C&Rs in the Work. Doc.

During discussions under this agenda item, concerns were expressed about the length of the OP3 procedure, which may take a minimum of 18 months, as this may risk further delaying cases under the 1980 Convention. In the Work. Doc. accompanying the agenda item, the PB suggested a C&R encouraging the UN Committee on the Rights of the Child to consider developing expeditious procedures regarding communications concerning the 1980 Convention, especially when an interim measure has been requested under Article 6 of OP3. Although some delegates expressed concerns that OP3 could, in some cases, be used in bad faith to further delay proceedings, there was no consensus to adopt this proposed C&R, given that such a C&R would go beyond the mandate of the HCCH.

With the exception of the aforementioned proposed C&R, the proposals by the PB were unanimously adopted by the 2023 SC without amendments.

V. Legal aid and representation under the 1980 Child Abduction Convention

> 18. The SC encouraged Contracting Parties that provide for legal aid and representation in the context of return proceedings to consider also doing so in the context of proceedings for access / contact.

A number of topics were presented for information under this agenda item, entitled "Central Authorities under the 1980 Convention – Duties and cooperation". Namely, cooperation and communication between Central Authorities, as well as cooperation in matters of language and translation, locating a child and taking preventive / proactive measures in the context of child abduction. In this regard, participants were referred to extracts from several documents, including the responses received to the relevant questions in the Questionnaire on the 1980 Convention (Prel. Doc. No 7), the relevant C&Rs adopted during previous meetings of the SC (Prel. Doc. No 1) as well as Guides to Good Practice on Central Authority practice (Part I) and preventive measures (Part III).

During the 2023 SC, it was highlighted that effective cooperation lies at the very heart of the proper functioning of the 1980 Convention and that Central Authorities play a fundamental role in this regard. It was noted that, in the light of C&Rs adopted during previous meetings of the SC encouraging Central Authorities to share expertise and knowledge among themselves, many Central Authorities appear to engage in periodic bilateral meetings, training

opportunities and seminars. It was also noted that Members of the IHNJ frequently attend such meetings and trainings, which further assists the exchange of information.

The importance of accompanying return applications with the necessary translation, as provided for under Article 24 of the 1980 Convention, was also highlighted under this agenda item, following reports from Central Authorities that applications are occasionally not accompanied by a translation. Although Article 24 also allows for translations of documents into English or French where a translation into the official language of the requested State is not feasible, it was noted that, in reality, courts and tribunals may be less receptive to documents in a foreign language. Therefore, in the spirit of cooperation, the possibility of making use of free online translation tools (*e.g.,* Deepl) was mentioned.

According to responses received to the Questionnaire on the 1980 Convention, Central Authorities appear to be experiencing difficulties in locating children who have been removed both to and from their territories, particularly when there are no government records available for the child and / or the taking parent, or when they are not nationals of the requested State. As such, serious delays have been reported in the processing of such cases. As underscored in previous SC meetings, Central Authorities play a crucial role in facilitating the location of children and following up with the intermediaries in charge of locating children. In this regard, cooperation among all actors involved is essential in reducing delays encountered in such cases.

The matter for discussion under this agenda item was the provision of legal assistance for both access / contact applications as well as for return applications. On this matter, the PB shared a finding based on responses received to questions 15-16 and 29-30 of the Questionnaire on the 1980 Convention that not all States provide the same level of assistance in access cases and return cases. In particular, some States appear to provide assistance for return cases only. It was noted that this can lead to an unnecessary escalation of family conflict.

It was noted that the duties of Central Authorities under Article 7(f) and (g) of the 1980 Convention also extend to organising and securing the effective exercise of the right of access. Over the years, the SC has adopted several C&Rs on the topic of legal aid. The Work. Doc. accompanying this agenda item presented these previously adopted C&Rs, along with the relevant provisions of the 1980 Convention (Arts 21 and 26) and relevant extracts from the Explanatory Report (paras 95, 127 and 139) as well as from various Guides to Good Practice (GGP) (paras 4.13 and 5.27 of GGP (Part I), paras 7.1 – 7.3 of GGP (Part II) and para. 5 of GGP on cross border contact).

During discussions, it was acknowledged that States approach the provision of legal aid and advice to applicants differently and that some States have made reservations under Article 26. There was, however, consensus among delegations that legal aid must be facilitated in cases of access and cases of contact. In this regard, it was clarified that the goal is not to harmonise practices among States, but to invite them to provide the same level of service in securing access to justice for both return and access applications.

The proposal for a C&R made by the PB in the Work. Doc. accompanying this agenda item was adopted by the 2023 SC with some amendments.

VI. Direct judicial communications and the International Hague Network of Judges (IHNJ)

19. The SC noted the report by the IHNJ on a meeting that was held on Saturday 14 October 2023, attended by 43 judges from 33 States, during which they celebrated the 25th Anniversary of the IHNJ. A number of matters were addressed at the meeting, namely, that members of the IHNJ:
    a. have a valuable and important role both domestically and internationally, which includes being a national reference point and can also include the provision of training, among other things. In addition, their role is not limited to the HCCH Conventions but can encompass other cross-border and domestic family law issues in the international context;
    b. will meet on a regular basis, taking advantage of information technology to meet online, in addition to in person;
    c. contribute to the Judges Newsletter on International Child Protection;
    d. provide support, as appropriate, for new members of the IHNJ;
    e. make greater use of the secure platform for a variety of matters, such as the sharing of good practices and training materials (*e.g.*, notes on legal issues) and receiving updates on recently posted INCADAT cases;
    f. are encouraged to produce annual reports of their activities which can be posted on the secure platform;
    g. welcomed the proposal for the development of a short model guide to court practice.

20. When transmitting a return application to the competent authority of the requested State, the SC noted the good practice of including the name and contact details of the Member of the IHNJ of the requested State, to facilitate communication of the competent judge with their Network Judge and direct judicial communications with the IHNJ Member of the requesting State.

21. The SC welcomed the finalisation of Prel. Doc. No 5, "Document to inform lawyers and judges about direct judicial communications, in specific cases, within the context of the International Hague Network of Judges", and Prel. Doc. No 8, "Information on the legal basis for direct judicial communications within the context of the International Hague Network of Judges (IHNJ)" of the 2017 SC (Prel. Docs Nos 5 and 8 of the 2023 SC) and looks forward to their publication.

22. The SC welcomed the initiatives to hold a regional in-person meeting of the IHNJ in Brazil (May 2024) and a global in-person meeting of the IHNJ in Singapore (May 2025), which will allow for a deeper debate on practical issues and projects aimed at the international protection of children.

The points addressed by these C&Rs were discussed during the IHNJ meeting which took place during the 2023 SC, on Saturday 14 October 2023. The 2023 SC discussed these matters the subsequent Monday. At plenary, the PB presented a document that aims to serve as a document for practitioners and judges who may not be familiar with cross-border direct

judicial communications and to introduce them to the IHNJ (Prel. Doc. No 5 of June 2023). The PB also presented Prel. Doc. No 8 of June 2023, an updated version of Prel. Doc. No 8 of August 2017, which provides information on the legal basis for direct judicial communications within the context of the IHNJ, which was originally approved during the 2017 SC. During discussions, delegations shared their regional and domestic procedures and bases for direct judicial communications.

VII. 25th Anniversary of the International Hague Network of Judges (IHNJ)

Meeting of the Members of the IHNJ during the Eighth Meeting of the SC on the Practical Operation of the 1980 and 1996 Conventions (Nutshuis, The Hague)

On Saturday, 14 October 2023, during the 2023 SC, Members of the IHNJ from over 30 jurisdictions met at the Nutshuis in The Hague to mark the 25th anniversary of the IHNJ. The meeting was attended by a total of 43 IHNJ judges from 33 different States: Argentina, Australia, Belgium, Brazil, Czech Republic, Dominican Republic, El Salvador, England and Wales, Dominican Republic, Estonia, Germany, Iceland, Italy, Japan, Latvia, Norway, Mexico, Netherlands, New Zealand, Panama, Paraguay, Philippines, Portugal, Romania, Singapore, Scotland, South Africa, Spain, Switzerland, Turkey, United States and Venezuela.

Brief snapshot of the IHNJ

The IHNJ was established in 1998, as a result of the first De Ruwenberg Seminar for Judges on the international protection of children, which had recommended that "the relevant authorities (*e.g.,* court presidents or other officials as is appropriate within the different legal cultures) in the different jurisdictions designate 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 jurisdictions and with judges in other Contracting States, in respect, at least initially, of issues relevant to the 1980 Convention.

The IHNJ facilitates international cooperation and communication between judges with regards to various cross-border and domestic family law issues in the international context, including but not limited to the cross-border protection of children.

It was also noted that the number of judges who are members of the International Hague Network of Judges (IHNJ) has increased from 124 in 2017 to 152 in 2023 and currently covers 88 jurisdictions in all continents.

More than 25 years after its establishment, it was reaffirmed during the October 2023 meeting that there is a broad range of international instruments, both regional and multilateral, such as the 1980 Child Abduction Convention and the 1996 Child Protection Convention, in relation to which direct judicial communications can play a helpful role. In this regard, the extension of the scope of the IHNJ to the 2000 Protection of Adults Convention, mandated during the meeting of the Council on General Affairs and Policy (CGAP) in March 2023, was also acknowledged.

In addition to celebrating the network's 25th anniversary, the IHNJ also discussed, among other things, the role of IHNJ judges, the use of the IHNJ secure platform, the Judges Newsletter as well as future meetings of the IHNJ (both in person and online) and future projects. It was emphasised that Members of the IHNJ play a role in educating and bringing together other judges in their jurisdictions. IHNJ Members agreed that sharing training materials, contributing to INCADAT and the Judges Newsletter as well as making annual reports would further facilitate cooperation and the implementation of the HCCH Conventions falling within the remit of the IHNJ.

IHNJ Members put together some text summarising the main takeaway points of their discussions, which appear as C&R Nos 19 and 20.

Special thanks to Ms Mathilde Prénas, senior administrative assistant at the PB, for the organisation of the IHNJ meeting.

VIII. Exceptions to the return of the child under the 1980 Child Abduction Convention and protective measures upon return

Before delving into the topics intended for discussion, the PB offered delegates some information pertaining to Article 20 of the 1980 Convention and to cases wherein criminal proceedings are initiated against the taking person.

On the subject of criminal proceedings initiated against the taking person, delegates were reminded of C&R No 5.2 of the 2001 SC and C&R No 1.8.4 of the 2006 SC. It was noted that, although such cases are quite rare, Central Authorities should inform left-behind parents of the implications of instituting criminal proceedings against the taking parent and the possible adverse effects such proceedings could have on the return of the child. It was also noted that, in the case of voluntary returns, Central Authorities should cooperate, insofar as national laws allow, to ensure that criminal charges are dropped.

Regarding Article 20, delegates were reminded of C&R No 4.5 of the 2001 SC, which states that, at the time, refusal to enforce return orders on the basis of Article 20 of the 1980

Convention were rather rare. It was noted that the use of Article 20 in this regard continues to be rare.

1. Article 13(1)(b) of the 1980 Child Abduction Convention – Domestic violence / family violence

> 23. Contracting Parties, where they have not already done so, are encouraged to complete and / or update Section 11.2, "Provisions for safe return", of the 1980 Child Abduction Convention Country Profile, with a view to enhancing the understanding of the measures of protection available to ensure the safe return of the child and the mechanisms to ensure compliance with such measures.
>
> 24. In that regard, Contracting Parties are also encouraged to provide publicly available information through other means (*e.g.*, specialised websites), which outlines services that can assist in families where a child may be exposed to family and domestic violence, which may relevantly include police and legal services, financial assistance schemes, housing assistance and shelters, and health services.
>
> 25. The SC welcomed the publication of the GGP on Article 13(1)(b) and encouraged its dissemination. The SC, underlining that the Guide must be read as whole, noted that, as set out in paragraph 33, "harm to a parent, whether physical or psychological, could, in some exceptional circumstances, create a grave risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. The Article 13(1)(b) exception does not require, for example, that the child be the direct or primary victim of physical harm if there is sufficient evidence that, because of a risk of harm directed to a taking parent, there is a grave risk to the child".

The issue of domestic and family violence in the context of the operation of the 1980 Convention has long been an ongoing discussion. In fact, this very newsletter acknowledged the issue nearly two decades ago, in 2005, with a piece written by the Honourable Justice Jacques Chamberland, Judge of the Quebec Court of Appeal, entitled *"Domestic Violence and International Child Abduction"* (see page 70 of the Volume X of the Judges' Newsletter). In his article, Justice Chamberland elaborated on this complex problem and endeavoured to envision a number of solutions, all of which posed their advantages and difficulties. In 2006, the Honourable Mr Justice John Gillen, Judge of the High Court in Northern Ireland, also contributed an article on the matter, entitled *"The Hague Convention and domestic violence – Friend or foe? – A common law perspective of interpretations of Article 13(1)(b) of the Hague Convention in the context of domestic violence."* (see page 31 of Volume XI of the Judges' Newsletter). In both contributions, it was clearly acknowledged that since the entry into force of the 1980 Convention, the profile of the "abductor" has changed and that there is substantial research to suggest that domestic violence is a common background to international child abduction.

In preparation for the 2011-2012 SC, the PB prepared a paper entitled *"Domestic and family violence and the Article 13 "grave risk" exception in the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: A Reflection Paper"* (see Prel. Doc. No 9 of May 2011). The paper constituted a small study of judicial practice, through an analysis of readily available national jurisprudence mainly focusing on procedural matters

relevant to the application of Article 13(1)(b) and made reference to regional and international law sources, social science and other research conducted in the area. This paper served as a basis for discussions on this matter.

During the 2023 SC, discussions were opened with a recollection of the pre-1980 Convention reality. Before the entry into force of the 1980 Convention, protection or remedy in cases of international child abduction was only available via consular channels. However, such protection was limited and often unsatisfactory, due to the broad mandate of consulates coupled with the fact that consulates are only tasked with protecting the State's own citizens. Other tools included mutual legal assistance treaties, which ensured the return of the taking parent but not necessarily the child.

Delegates at the 2023 SC were reminded that, during the 2011-2012 SC, the possibility of amending the 1980 Convention was discussed, given the increasing and systematic reliance on Article 13(1)(b) on the one hand and the systematic rushing of decisions to return the child without any consideration of alleged risks or the systemic refusal to return children, on the other hand. It was recalled that, at the time, delegations were not able to reach a consensus on the possible amendments to the Convention.

Instead, the 2011-2012 SC discussed possible tools to improve the operation of the 1980 Convention.

The first possible tool that was discussed was what it is now the GGP Part VI on Article 13(1)(b), adopted in March 2020, which has contributed to improving the situation, as judges appear to be citing the GGP in their decisions.

The second possible tool discussed was what is now the recently adopted *Practitioners' Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children* (Practitioners' Tool), adopted and published in December 2022.

The third possible tool discussed was a possible instrument for direct judicial communications. At the time of writing, no instruments have been developed in this area, although good practices have been encouraged with success in the context of regular meetings of the IHNJ as well as through the Emerging Guidance and General Principles for Judicial Communications, published by the HCCH in 2013.

A delegate representing an organisation involved in child abduction cases shared the experiences of their organisation, providing advice to parents in international abduction cases, and highlighted the emotional and mental health impact such cases have on all parties involved. As such, the delegate encouraged more and more States to join the 1980 Convention.

This agenda item was accompanied by two Work. Docs. One of the Work. Docs included the relevant provisions from the 1980 Convention (Arts 7 and 13(1)(b)), relevant extracts from the GGP Part VI on Article 13(1)(b) (*i.e.,* extracts from the glossary and paras 43 and 46), a summary of responses to Section 11.2. of the Country Profile under the 1980 Convention, as well as existing C&Rs from previous meetings of the SC (C&R No 1.8 of the 2001 SC and C&R No 3 of the 2006 SC). Based on the foregoing, the PB made two suggestions for C&Rs, one of which (C&R No 23) was unanimously adopted by the 2023 SC without amendments and the other (C&R No 24) was adopted with some amendments. In proposed C&R No 24, the PB had originally suggested to encourage Central Authorities to include publicly available information on their website which outlines services that can assist families where a child may be exposed to domestic and family violence. Some delegations expressed concern about sharing detailed information concerning protective measures on a Central Authority website. The language of C&R 24 was, therefore, amended to be of a more general nature, without making reference to Central Authorities.

The second Work. Doc. shared with delegates under this agenda item included relevant extracts from an article entitled *"Response to Professors Rhona Schuz and Merle H Weiner ('the authors'), 'A mistake waiting to happen: the failure to correct the Guide to Good Practice on Article 13(1)(b)'"*, written by the Honourable Diana Bryant AO, QC, who was the Chair of the WG that drafted the GGP Part VI on Article 13(1)(b). The article was published in a 2020 issue of the International Family Law Journal (Issue 1 pp.207-208). The PB included a proposal for a C&R on the subject of the GGP on Article 13(1)(b) (C&R No 25), which was adopted with some amendments. During discussions, some delegations highlighted the importance of reading the GGP on Article 13(1)(b) as a whole, and, during a session of the 2023 SC Drafting Committee, it was agreed that it would be preferrable for the C&R to quote paragraph 33 of the GGP directly.

2. Possible forum on domestic violence and Article 13(1)(b) of the 1980 Child Abduction Convention

> 26. In light of the discussions on the issue of domestic violence and the operation of Article 13(1)(b), and further to correspondence received by the Secretary General from advocates for victims of domestic violence prior to the start of the SC the SC supported the proposal of the Secretary General to hold a forum that would allow for discussions amongst organisations representing parents and children, and those applying the Convention. The importance of ensuring a balanced representation of all interested parties was emphasised. The agenda of the forum, which would focus on the issue of domestic violence in the context of Article 13(1)(b), would be prepared by a representative Steering Committee. The forum may also inform possible further work of the HCCH on this matter. Subject to available resources, the forum would ideally take place in the course of 2024. The SC invited States that are interested in contributing to the organisation and funding of such a forum to inform the PB accordingly. The SC thanked the Philippines for their willingness to assess hosting the forum in Manila, with the financial support of other interested States and observers.

Prior to the 2023 SC, the HCCH became aware of, and was contacted by, several national domestic violence advocacy groups which were vocal, in particular, about the operation of Article 13(1)(b) of the 1980 Convention and the risks posed by a misuse or misinterpretation of the Convention's core objective: to secure the protection of children in cases of international child abduction and to ensure their best interests are respected in this regard. It is important to note that only NGOs of an international character can be observers at HCCH meetings. Thus, national NGOs could not take part in the SC.

In the light of such correspondence, the Secretary General of the HCCH suggested the possibility of holding a forum where an open exchange and dialogue could take place, which would involve hearing from various national and international interested groups, including but not limited to victims of domestic violence and left-behind parents. The Secretary General also suggested that such a forum also provide an opportunity to exchange information and views pertaining to jurisprudence involving the application of Article 13(1)(b), in order to establish good practices. This suggestion was widely supported by delegates and the above cited C&R No 26 was adopted. At its 2024 meeting, CGAP endorsed the forum:

> "CGAP welcomed the holding of a Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention, to take place

> in Sandton, South Africa, from 18 to 21 June 2024. CGAP highlighted the importance of ensuring balanced and diverse participation in the Forum from all relevant actors. CGAP noted that, while in-person participation is encouraged, at least passive online participation will be ensured. CGAP expressed its gratitude to the Government of South Africa for its generous offer to host the Forum, and thanked Australia, Brazil, the Philippines (both the Department of Justice and the Supreme Court), and the United Kingdom, for their respective financial contributions towards the Forum. CGAP encouraged other States and interested parties to consider making a voluntary contribution to cover the costs of the Forum." (C&D No 31)

Following the mandate from CGAP, pre-registration for the Forum was opened on 28 March 2024 via a focused circular. Due to budgetary constraints, in-person participation in the Forum is limited to 100 in-person participants, with passive online participation also available. In addition to Contracting Parties and their Central Authorities, Forum participants are expected to include judicial officers, legal practitioners, advocates for victims of domestic violence and left-behind parents, academic researchers, psychologists, and other subject-matter experts.

3. Article 13(1)(b) of the 1980 Child Abduction Convention – Safe return, including urgent measures of protection

27. The SC welcomed the Australian factsheet "International Hague Network of Judges – Assistance with protective measures through the International Hague Network of Judges for children orders to be returned to Australia" and noted that such information would be helpful in many cases in addressing the availability of protective measures, if necessary and appropriate.

28. The SC recognised that, when necessary, a court may order protective measures to protect the accompanying parent in order to address the grave risk to the child.

29. The SC recognised that measures to protect the accompanying parent may cover, as set out in paragraph 43 of the GGP on Article 13(1)(b), "a broad range of existing services, assistance and support, including access to legal services, financial assistance, housing assistance, health services, shelters and other forms of assistance or support to victims of domestic violence, as well as responses by police and through the criminal justice system."

30. Measures of protection should be considered and / or ordered only where necessary. As set out in paragraph 45 of the GGP on Article 13(1)(b), "[i]deally, given that any delays could frustrate the objectives of the Convention, potential protective measures should be raised early in proceedings so that each party has an adequate opportunity to adduce relevant evidence in a timely manner in relation to the need for, and enforceability of, such measures."

During discussions under this agenda item, reference was made to C&R No 27 from the 2017 SC, which provides:

> "When taking measures of protection in accordance with Article 11 of the 1996 Convention in a child abduction case (for example, to facilitate interim access or

> ensure safe return), competent authorities are invited, preferably through Central Authorities or members of the International Hague Network of Judges (IHNJ) to obtain information on available measures of protection in the other State with a view to ensuring the effective implementation of such measures."

In this regard, the delegation of Australia presented a fact sheet containing information for judges, parties, parents and mediators in cases involving a child or children allegedly wrongfully removed from, or wrongfully retained out of, Australia and whose return to Australia has been requested by the Australian Central Authority under the 1980 Convention. The fact sheet was developed by Australia's IHNJ judges in collaboration with the Australian Central Authority and other areas of government and is designed to assist with the resolution of return requests under the 1980 Convention. It outlines the protective measures that can be implemented upon the child's return in each state and territory in Australia. It also intends to provide information on mediation and increase direct judicial communications.

The Australian delegation outlined that consideration of possible protective measures at an early stage of hearing a return application can provide certainty regarding the child's circumstances as well as vital information to taking persons who may be experiencing domestic violence. The fact sheet contains information relating to the mechanisms available for the simple and rapid process for recognition of orders in relation to the 1980 Convention as well as the 1996 Convention, and illustrates the types of orders that would be permissible under Article 11 of the 1996 Convention.

Many delegations commended the Australian fact sheet and noted that the development and dissemination of similar national fact sheets would be highly useful to practitioners in the area. However, it was noted that the measures available will depend on the State's domestic legal system and such measures may not be available in the State to which the child is to be returned. Nevertheless, it was highlighted that coordination and cooperation between Central and other authorities in both States could facilitate adequate protection for the child's return. Some delegations expressed the concern that the dissemination of such fact sheets at the early stage of proceedings may undermine mutual trust between States if provided in every case, given that in some cases such measures may not be relevant if exceptions to return are not raised.

During discussions, the possibility of the PB preparing a general document similar to the Australian fact sheet, with the assistance of a WG, that could be adopted by States was raised, but this proposal did not meet consensus, as delegations considered it premature and expressed a preference that the SC continues to monitor States' initiatives in this area before considering the establishment of a WG for this purpose. Another suggestion made during discussions was to establish a WG tasked with monitoring and discussing the issue of domestic violence in the context of international child abduction and the application of Article 13(1)(b). Delegations expressed concerns with this suggestion, particularly because the mandate of a WG that convened for a ten-year period on the subject of domestic violence had ended relatively recently with the publication of the GGP on Article 13(1)(b). Delegations agreed that more time should be given for the GGP to be used in practice and for developments in this regard to be carefully monitored before the SC seeks a mandate for future work in the area.

In addition to the fact sheet presented by Australia, this agenda item was also accompanied by a Work. Doc. prepared by the PB, which contained some responses received to question 44 of the Questionnaire on the 1980 Convention, relevant provisions from the 1996 Convention (namely Art. 11), extracts from the GGP Part VI on Article 13(1)(b) (*i.e.,* extracts from the glossary and paras 33 and 43 – 48) as well as relevant C&Rs from previous meetings of the SC (*i.e.,* C&R No 3 from the 1997 SC, C&R Nos 1.8 and 1.13 from the 2001 SC, C&R Nos 1.8.2. and 1.1.12 from the 2006 SC, C&R Nos 40 and 42 from the 2011-2012 SC and C&R No 27 from the 2017 SC). Based on the foregoing, the PB made a proposal for some C&Rs in the Work. Doc. which were inspired by the language found in C&Rs from previous SC meetings and by the language of

the GGP on Article 13(1)(b), aiming to build upon it. Although delegations were supportive of the general idea behind the proposals in the Work. Doc., they expressed hesitation to depart from, or build upon, the carefully negotiated language of the GGP. They also highlighted the importance of recognising the discretion of courts to order protective measures are part of a return order, in accordance with Article 13 of the 1980 Convention. Delegations also favoured more concise language. Some delegations proposed some alternative language for the C&Rs at plenary and the matter was deferred to the Drafting Committee, which made proposals that were adopted with some amendments.

4. Court undertakings

31. Whether in the form of a court order or voluntary undertakings, the efficacy of the measures of protection will depend on whether and under what conditions they may be rendered enforceable in the State of habitual residence of the child, which will depend on the domestic law of this State. One option may be to give legal effect to the protective measure by a mirror order in the State of habitual residence – if possible and available. But the court in the requested State cannot make orders that would exceed its jurisdiction or that are not required to mitigate an established grave risk. It should be noted that voluntary undertakings are not easily or always enforceable, and therefore may not be effective in many cases. Hence, unless voluntary undertakings can be made enforceable in the State of habitual residence of the child, they should be used with caution, especially in cases where the grave risk involves domestic violence (para. 47 of the GGP on Article 13(1)(b)).

32. As far as possible, when undertakings are made to the court of the requested State, they should be included in the return order in order to help facilitate enforcement in the State of habitual residence of the child.

33. The SC underlined the importance of obtaining information on available measures of protection in the State of habitual residence of the child before ordering them, when necessary or appropriate.

34. If ordered under Article 11 of the 1996 Child Protection Convention, such measures of protection will be recognised by operation of law in all other Contracting Parties, and "can be declared enforceable at the request of any interested party in accordance with the procedure provided in the law of the State where enforcement is sought" (para. 48 of the GGP on Article 13(1)(b)).

This agenda item was accompanied by a Work. Doc. which included some relevant responses from States to questions 43, 44, 46 and 47 of the Questionnaire on the 1980 Convention, relevant provisions from the 1980 Convention (namely Art. 11), paragraphs from the GGP Part VI on Article 13(1)(b) (*i.e.,* extracts from the glossary and paras 43, 46 – 49) and relevant C&Rs from previous SC meetings (*i.e.,* C&R No 1.8.1 from the 2006 SC). Also relevant to the discussions on this topic were the responses received to question 10 of the Questionnaire on the 1996 Convention, which concerned the operation of Article 11 of the 1996 Convention (Prel. Doc. No 6A of June 2023). The PB suggested some language for a possible C&R in the accompanying Work. Doc., in order to facilitate the discussion.

During discussions, it was recalled that the definition of "undertaking" can be found in the glossary of the GGP on Article 13(1)(b). It was noted that the main issue with undertakings is that they may not be legally enforceable in the State of the child's habitual residence, due to domestic law limitations. In this regard, some States expressed concerns with the use of undertakings in their responses to the Questionnaire on the 1980 Convention, particularly when they give rise to an expectation of enforceability.

There was agreement among delegates that undertakings should be used with caution as protective measures in the context of a grave risk under Article 13(1)(b). However, delegations expressed hesitation to deviate from the carefully negotiated language of the GGP on Article 13(1)(b) and instead preferred to quote paragraph 47 of the GGP in its entirety, which now appears as C&R No 31. During a Drafting Committee session, members of the Committee were also in favour of quoting paragraph 48 of the GGP, for the sake of completeness. Delegations were in favour of retaining the last sentence of the proposal made by the PB, with some amendments, which encouraged States which do rely on court undertakings to incorporate them into the return orders they issue (C&R No 32).

During discussions, it was also underlined that judges contemplating issuing a court undertaking should be encouraged to inquire, in advance, about whether it would be enforceable or not in the other State. This idea was reflected in C&R No 33.

5. Hearing the child

35. The SC recognised that as set out in C&R No 50 of the 2011 Sixth Meeting of the SC (2011 SC), "States follow different approaches in their national law as to the way in which the child's views may be obtained and introduced into the proceedings".

36. When hearing the child for the purposes of Article 13(2) of the 1980 Child Abduction Convention, the SC emphasised that it is only for that purpose and not in respect of broader questions concerning the welfare of the child, which are for the court of the child's habitual residence.

37. In that regard, the SC noted the following good practices:
    a. the person who hears the child, be it the judge, an independent expert or any other person, should have appropriate training to carry out this task in a child-friendly manner and training on international child abduction and the operation of the 1980 Child Abduction Convention;
    b. if the person hearing the child speaks to one parent, they should speak to the other;
    c. the person hearing the child should not express any view on questions of custody and access as the child abduction application deals only with return.

38. The SC noted that the "child objection" exception under Article 13(2) of the 1980 Child Abduction Convention is separate from Article 13(1)(b) and does not depend on there being a grave risk of physical or psychological harm to the child or on the child being placed in an intolerable situation if their views are not respected.

39. If the child is heard for purposes other than Article 13(2) of the 1980 Child Abduction Convention, including for interim access / contact, the good practices above apply *as appropriate.*

This agenda item was accompanied by a Work. Doc. which included some relevant responses from States to questions 33 and 34 of the Questionnaire on the 1980 Convention, as well as relevant provisions from the 1980 Convention (Art. 13(2)) and the UNCRC (Art. 12). The Work. Doc. also cited extracts from the Explanatory Report on the 1980 Convention (*i.e.,* para. 30) and from the GGP Part VI on Article 13(1)(b) (*i.e.,* paras 86-88), along with relevant C&Rs from past meetings of the SC (*i.e.,* C&R No 3.8 from the 2001 SC and C&R No 50 from the 2011-2012 SC). The proposal put forward by the PB to facilitate discussions was based on the language of the GGP but was also inspired by practices shared by various States in their responses to the Questionnaire on the 1980 Convention.

During discussions, it was noted that there have always been some challenges in distinguishing the process of hearing children in the context of custody proceedings from hearing children in the context of return proceedings. It was noted that, according to practice, the person who interviews the child is often unfamiliar with international child abduction proceedings and seeks information from the child that would normally be sought during a welfare interview in the context of a custody proceeding. This results in information that is irrelevant to the return proceedings, such as recommendations regarding where or with whom the child should live. It was agreed that, although procedures on hearing the child will differ from State to State, it is important to identify and disseminate good practices in this area and provide some helpful guidance to persons who hear children during return proceedings.

There was general support among delegations for the proposal of the PB, though some delegations were of the view that the language could benefit from being less directive and more general.

IX. Processing of return applications under the 1980 Child Abduction Convention

Before proceeding to the items intended for discussion, the PB provided the 2023 SC with an update and further information on several topics pertaining to processing return applications.

It was noted that the matter of processing return applications under the 1980 Convention has been discussed numerous times in the past and there is a wealth of existing information and good practice, which can be found in the GGP Part I on Central Authority Practice and in C&Rs from previous SC meetings. Prel. Doc. No 12 of August 2023, which addresses delays in processing return applications, enumerates the ways in which processes can be improved in order to comply with the requirement of speed imposed by the Convention. The GGP Part VI on Article 13(1)(b) also provides some guidelines to be taken into account when assessing the grave risk exception.

The importance of cooperation and communication was reiterated. In this regard, it was highlighted that direct judicial communications can play an extremely useful role. It was also noted that Central Authorities can further enhance the efficacy of direct judicial communications by raising awareness of the IHNJ in their own jurisdictions. Cooperation is also important in ensuring the taking person is able to travel with the child back to the State of habitual residence, for the return or access order to be enforced and in ensuring participation in judicial proceedings pertaining to the custody or protection of the child.

It was noted that many challenges remain regarding the enforcement of return orders and that the speed of the proceedings is undoubtedly a factor that has a direct impact on the ease with which enforcement can be carried out. Another factor is the issuing and proper implementation of protective measures. In this regard, States were encouraged to simplify their laws and procedures relating to enforcement, perhaps drawing inspiration from State practices cited in the GGP Part IV on Enforcement. The PB invited States that are experiencing

challenges or delays in the enforcement of return orders to review the processing times of cases and assess whether any of the suggested practices contained in Prel. Doc. No 12 may be useful in addressing those challenges or delays.

Finally, the PB provided an update with regards to return applications in the context of disturbances occurring in the State of habitual residence. In January 2023, a round table was organised to discuss the displacement of Ukrainian children due to the war in Ukraine, through the lens of the 1980 and 1996 Conventions. In most cases, Ukrainian children and their accompanying parent(s) left Ukraine with the consent of the left-behind parent or other caretaker and in conformity with martial law. During the round table, ways in which premature non-returns or returns could be avoided were discussed. Under Article 18 of the 1980 Convention, the return can be ordered at any time, which might be of particular importance in the context of the war in Ukraine, as it remains unclear how long the situation may last. Participants of the round table also discussed possible ways in which the jurisdiction of Ukraine over the children who were displaced as a result of the war could be safeguarded, one of which was for left behind parents to seise Ukrainian courts in order to secure contact with the children. The agenda for the round table can be found in Info. Doc. No 7 of October 2023.

1. Return applications where the taking parent lodged a parallel asylum claim

> 40. Further to the discussion on Prel. Doc. No 16,[3] the SC emphasised the importance of deciding return applications and a parallel asylum claim expeditiously. Where possible under domestic law and appropriate, the SC invited Contracting Parties to the 1980 Child Abduction Convention to consider taking steps to achieve this result.

This agenda item was accompanied by Prel. Doc. No 16 of August 2023 and a Work. Doc. which contained a proposal for a possible C&R by the PB, to further facilitate discussions. Also relevant to the discussions were the responses received to question 39 of the Questionnaire on the 1980 Convention and the responses to question 1 of the Questionnaire on the 1996 Convention (see Prel. Doc. No 6A).

It was noted that 20 out of the 47 Contracting States that responded to the Questionnaire on the 1980 Convention reported challenges in processing return applications when there was a parallel asylum application lodged by the taking parent and / or by the child. In such situations, the 1951 Refugee Convention and its 1967 Protocol, as well as other international instruments, could apply. The challenges indicated by States were of a procedural and substantive nature, relating both to the processing of such cases by Central Authorities and judicial proceedings under the 1980 Convention. Such challenges included, among others:

a. issues regarding the confidentiality of the asylum claim, which include, but are not limited to, challenges concerning exchanging information between Central Authorities and the extent to which courts seised with a return application can obtain updates on the status of the asylum claim;

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3 "Discussion paper on international child abduction return applications where the taking parent lodged a parallel asylum claim", Prel. Doc. No 16 of August 2023, available on the HCCH website at www.hcch.net under "Child Abduction Section" then "Special Commission meetings".

b. the stay of return proceedings under the 1980 Convention until the asylum claim is decided, generating long delays in deciding and / or enforcing the return;
c. the determination of the wrongful character of the removal under the 1980 Convention when a parallel asylum claim is pending; and
d. overall, divergence in the approaches of courts deciding on applications for return under the 1980 Convention when a parallel asylum claim is pending decision.

As this is an area in which different international instruments apply, the PB consulted with the United Nations Office of the High Commissioner for Refugees (UNHCR) during the drafting process of Prel. Doc. No 16 and in preparation for the 2023 SC.

During discussions, it was noted that delays in the processing of asylum claims may have a knock-on effect on the processing of return applications under the 1980 Convention and cause further, undue delay. The role of the refugee law principle of *non-refoulement*, that prohibits States from returning individuals to territories where they may be at risk of persecution, was also mentioned. Concerns were raised about cases where the return proceedings are stayed pending the resolution of the asylum claim, only for the asylum claim to later be proven unfounded, but at that point the return of the child is untenable because they have already settled in the new State. Concerns were equally raised about cases where the return of the child is ordered, but the refugee status is subsequently confirmed. An additional challenge in this area is the involvement of various levels of government that respond to different international obligations, whether administrative or judicial.

Delegates largely agreed with the PB's recommendation in the Work. Doc. that return applications under the 1980 Convention and asylum claims running in parallel should be processed as swiftly as possible. However, delegates considered the second part of the PB's recommendation, which offered ways in which competent authorities could mitigate potential conflicts between return decisions and decisions on asylum, premature as the jurisprudence on this issue is still evolving. It was also noted that such cases are rare because they involve the abduction of a child to a State of which the taking parent is not a national.

Delegates did not find any potential conflict between the 1980 Convention and the 1951 Refugee Convention in this regard, despite the implications of the *non-refoulement* principle, since a proper interpretation of the 1980 Convention implies the respect for, and fulfilment of, *non-refoulement* obligations, as Articles 13(1)(b) and 20 must be interpreted with the principle in mind.

2. Determination of wrongful removal (Arts 8, 14 and 15)

41. The SC noted that Central Authorities should seek to ensure that all the required information is provided at the beginning of the return application process, having regard to the importance of speedy procedures. This will result in more clarity for competent authorities and save time.

42. The SC encouraged Contracting Parties to make use of the provisions under Article 8 as appropriate and in a manner that is as time efficient as possible. In this regard, the SC encouraged Contracting Parties to consider using the revised Request for Return Recommended Model Form if approved.[4]

43. The SC emphasised the discretionary nature of Article 15 requests and encouraged Contracting Parties that provide for such requests to have procedures in place to enhance efficiency.

44. The SC underlined that the IHNJ can play an important role in facilitating the expeditious provision of information on foreign law.

45. The SC noted the discretion that judicial or administrative authorities have under Article 14 in relation to determinations issued under Article 15.

46. The SC invited the PB to draw up a note containing information on the use of Articles 8, 14 and 15 of the 1980 Child Abduction Convention, drawing from the contents of Prel. Doc. No 14.[5] In developing the note, the draft will be submitted to States for comments. Once a first draft is completed, it will be circulated to Members and Contracting Parties and submitted to CGAP for final approval.

This agenda item was accompanied by Prel. Doc. No 14 of August 2023, which made some suggestions for C&Rs to facilitate discussion. Also relevant to the discussions were several existing C&Rs adopted during previous meetings of the SC (*i.e.,* C&R No 1.6 from the 2001 SC, C&R Nos 1.1.1 – 1.1.3 from the 2006 SC, C&R Nos 12, 13 and 63 from the 2011-2012 SC and C&R No 6 from the 2017 SC) and responses received to questions 35-38 of the Questionnaire on the 1980 Convention. The content of Prel. Doc. No 14 is based on the responses received to the aforementioned questions from the Questionnaire.

During discussions, it was noted that Article 15 requests are seldomly made, and a few States who do make use of Article 15 requests have established some procedures in that regard. In their questionnaire responses, States reported several good practices in this area, such as the use of model forms, attaching information on relevant domestic law to applications in accordance with Art. 8(2)(f), consulting Country Profiles and the provision of assistance to left behind parents by Central Authorities in filing their application.

It was clear among delegates that decisions and other determinations under Article 15 are purely voluntary and discretionary. It was noted that, while jurisprudence in this area has established that they can be necessary and useful in some circumstances (where, for example, the information already available to the requested State is not sufficient), jurisprudence has also highlighted potential delays connected with Article 15.

Prel. Doc. No 14 lists various alternatives that could prove to be more expeditious than the mechanism under Article 15, such as the use of supplementary documents and judicial

4 Available on the HCCH website at www.hcch.net under "Child Abduction Section".

5 "Tools available to ascertain whether a removal or retention is wrongful under the 1980 Child Abduction Convention (Arts 8, 14 and 15)", Prel. Doc. No 14 of August 2023, available on the HCCH website at www.hcch.net (see path indicated in note 7).

notices. In this regard, it was acknowledged that the utility of direct judicial communications and the IHNJ, as well as Central Authority cooperation cannot be overstated.

Some States, in their responses to the questionnaire, mentioned that it could be useful if a few questions were added to the Country Profile pertaining to domestic procedures following a request under Article 15. To this effect, the PB included some suggested additions to the Country Profile in Prel. Doc. No 14, which were broadly supported by delegates.

Given that the proper functioning of the 1980 Convention is underpinned by effective procedures, it was noted that States making use of the mechanism under Article 15 should ensure that those procedures are as speedy as possible, so as not to contribute to any delays.

The PB requested permission from the SC to circulate a questionnaire to Central Authorities, in order to better understand practices in relation to Article 14 and 15 procedures. The responses received to this questionnaire would supplement the content of Prel. Doc. No 14 and would result in the development of a note containing information on the use of Articles 8, 14 and 15. Delegates agreed with this proposed way forward, although they did not consider it necessary to establish a WG to pursue this work.

Delegates expressed concern about the language of proposed C&R "a" in Prel. Doc. No 14, noting that Article 11 does not expressly provide for a six-week deadline *per se*. There was also no consensus to adopt proposed C&R "f", which stated that it may be good practice for Contracting States to implement, where possible, procedures for left-behind parents to obtain swift, *ex parte* decisions on whether the removal was wrongful. Delegates agreed that the question of whether a child was wrongfully removed often involves complex questions of fact, the resolution of which should benefit from evidence and arguments put forward by both parties.

X. Rights of custody, access / contact under the 1980 Child Abduction Convention

Before delving into the topics intended for discussion, the PB offered delegates with a general update pertaining to rights of custody, trans-frontier access / contact, international family relocation and access / contact between the child and the applicant during return proceedings.

It was noted that, over the years, the SC has discussed various matters pertaining to rights of custody and access / contact. The SC has adopted numerous C&Rs on the subject, highlighting that custody rights must be interpreted according to the autonomous nature of the Convention and in light of its objectives (see C&R No 44 of 2011-2012 SC) and that Central Authorities must cooperate as much as possible in order to provide information regarding the types of aid available to the parties in the requesting State and facilitate contact with these authorities, where possible and where appropriate, in order to remove obstacles to the participation of both parties in custody processes following the return of the child (see C&R No 2 of 1997 SC and C&R No 1.8.5 of 2006 SC). In this regard, the SC has long recognised the importance of the Country Profile and direct judicial communications (see C&R No 46 of 2011-2012 SC).

The issue of trans-frontier access / contact has also been a subject of discussion at previous SC meetings, where it was recognised that interruptions of visits / contact between the child and the left behind parent are not in the best interests of the child and should, as such, be avoided or minimised, where possible (see C&R No 20 of 2017 SC and General Principles and GGP on Transfrontier Contact Concerning Children). The complementarity between the 1980 Convention with the 1996 Convention in securing rights of access / contact was also recognised in previous SC meetings.

1. Access / contact – Central Authority services under the 1980 Child Abduction Convention (Art. 21) and the 1996 Child Protection Convention (Arts 32, 34 and 35)

47. The SC reiterated that an application to make arrangements for organising or securing the effective exercise of rights of access / contact under Article 21 of the 1980 Child Abduction Convention can be presented to Central Authorities, independently of being linked or not, to an international child abduction situation (as identified in C&R No 18 of the 2017 SC).

48. The SC noted the complementary nature of Article 35 of the 1996 Child Protection Convention in relation to access requests made under the 1980 Child Abduction Convention and encouraged Contracting Parties, where possible, to make use of the provisions of Article 35 for the purposes of the 1980 Child Abduction Convention.

49. The SC noted with appreciation that a majority of Contracting Parties which have responded to the 1980 and 1996 Questionnaires provide or facilitate the provision of legal aid, where the circumstances so require, and provide advice to an applicant from abroad, under both the 1980 Child Abduction and 1996 Child Protection Conventions. The SC recalled the principles developed in the Transfrontier Contact Concerning Children – General Principles and Guide to Good Practice:[6] "In the case of an applicant from abroad, effective access to procedures implies: i) the availability of appropriate advice and information which takes account of the special difficulties arising from unfamiliarity with language or legal systems; ii) the provision of appropriate assistance in instituting proceedings; iii) that lack of adequate means should not be a barrier; and iv) that there is an opportunity to raise issues of contact at all relevant times." (para. 5.1.2) The SC encourages other Contracting Parties to do the same.

This agenda item was accompanied by Prel. Doc. No 15 of August 2023, which aimed to identify existing variations and discrepancies between access / contact under the 1980 Convention and the 1996 Convention and assess to what extent they could be addressed with existing HCCH tools. Also relevant to the discussion were the responses to questions 31 and 32 of the Questionnaire on the 1980 Convention, as were the many C&Rs adopted on this topic at previous SC meetings (*i.e.*, C&R No 5 of the 1993 SC, C&R No 6.1 of the 2001 SC, C&R No 2(e) of the 2002 SC, C&R Nos 1.7.1 and 1.7.2 (c) of the 2006 SC, C&R Nos 17 - 20 of the 2011-2012 SC and C&R Nos 18 and 20 of the 2017 SC).

Prel. Doc. No 15 cites C&Rs from previous SC meetings that recognised variations as to the interpretation of Article 21 of the 1980 Convention, on the one hand and Articles 32, 34 and 35 of the 1996 Convention, on the other hand. The document is based on the responses received to both the Questionnaire on the 1980 Convention and the Questionnaire on the 1996 Convention. It is important to note that all Contracting States to the 1996 Convention are also Contracting States to the 1980 Convention. An analysis of the responses to both Questionnaires revealed that only a few respondents to the Questionnaire on the 1996

[6] Available on the HCCH website at www.hcch.net under "Child Abduction Section", then "HCCH Publications".

Convention had reported experiencing difficulties in exercising the right to access, while the proportion was different when it came to the 1980 Convention. Several States pointed out the lack of uniformity in relation to the way in which obligations under Article 21 of the 1980 Convention are interpreted. For instance, several States indicate that an applicant may have to apply directly to a competent authority, without the assistance of a Central Authority, when they are trying to have access rights enforced abroad. The analysis in Prel. Doc. No 15 shows that the level of service offered by Central Authorities under the 1996 Convention is generally lower than under the 1980 Convention.

As such, the benefits of having the same Central Authority for both Conventions was mentioned, as this would make it easier for Central Authorities to provide the same level of service under both Conventions. Existing tools such as the General Principles and GGP on Transfrontier Contact Concerning Children remain of high relevance, as the GGP applies equally to both the 1980 and 1996 Conventions.

It was also noted that tools currently under development may also help to promote alignment of services under the two Conventions in the future. For instance, section 7.5 of the draft Country Profile for the 1996 Convention provides a comprehensive list of services. The PB suggested the possibility of adding a similar list to the 1980 Country Profile, which would make comparison of services easier. This suggestion, however, did not meet consensus during discussions. Finally, it was noted that the adoption of a Request for Access Recommended Model Form under the 1980 Convention and a Cooperation Request Recommended Model Form under the 1996 Convention could also be of assistance by raising awareness on the different services that may be requested.

XI. Tools to assist with the implementation of the 1980 Child Abduction Convention

1. Revised Request for Return Recommended Model Form and new Request for Access Recommended Model Form

> 50. Noting the progress made in relation to the revised Request for Return Recommended Model Form and the new Request for Access Recommended Model Form, the SC concluded that further work was needed. The SC suggested that a Group of interested delegates assist the PB in finalising both revised Forms. This Group would meet online. The SC invited the PB to issue a circular inviting interested States to identify delegates interested in participating in this work. The SC requested the PB to circulate the revised Forms to all Members and non-Member Contracting Parties. The revised Forms will be submitted to the Council on General Affairs and Policy (CGAP) for approval, if possible, at its March 2024 meeting, or, if not possible, through a distance decision-making process.

During discussions, it was noted that work to modernise the Request for Return Recommended Model Form dated back to the 2006 SC. Work on developing a Request for Access Recommended form dates back to the 2011-2012 SC. The importance of finalising the work on both Forms was emphasised at the 2023 SC.

Pursuant to C&R No 9 of the 2017 SC, the revised Request for Return Recommend Model Form and new Request for Access Recommended Model Form under the 1980 Convention were presented to the SC in Prel. Doc. No 10 of July 2023 along with an explanatory note. Since the

2017 SC, the PB had gathered comments on the Model Forms from 13 States, which were taken into consideration and explained in Prel. Doc. No 10.

There was consensus among delegates to establish a WG which would meet online in order to finalise the Model Forms. It was agreed that the finalised Model Forms would either be presented to CGAP 2024 or would be circulated for approval by written procedure. Following the 2023 SC, the PB invited Members and Contracting States to designate experts to participate in the WG meetings to finalise the Forms. The WG met on 7, 14 and 21 February 2024. At the time of writing, a consultation / approval period has been opened by circulating the Forms among Members for approval by silent procedure.

2. Revised Country Profile under the 1980 Child Abduction Convention

> 51. The SC approved the revision of some items of the Country Profile under the 1980 Child Abduction Convention subject to the PB undertaking final editing and incorporating amendments to the text to reflect the comments received during the meeting of the SC.

This agenda item was accompanied by Prel. Doc. No 18 of August 2023 and a Work. Doc. submitted by the delegation of the USA, which included additional suggestions for amendments.

The PB clarified that the Country Profile for the 1980 Convention had been re-formatted in order to be compatible with the e-Country Profile project, kindly funded by the European Union and other Members / Contracting States. The e-Country Profile project includes generating or updating electronic versions Country Profiles under the 1965 Service, 1970 Evidence, 1980 Child Abduction, 1993 Adoption, 1996 Child Protection, 2000 Protection of Adults and 2007 Child Support Conventions by the end of August 2025.

It was noted that the questions from the Questionnaire on the 1980 Convention which were relevant to the 1980 Country Profile were questions 38 and 53(a). Based on the responses to question 53(a) of the Questionnaire on the 1980 Convention, it was noted that the Country Profile is a very useful tool for caseworkers to consult, when completed and kept up-to-date. The responses to question 38 were discussed under agenda item VIII.7 on the determination of wrongful removal, wherein the inclusion of a few additional questions on Article 15 was broadly supported by delegates.

During the 2023 SC, two brief informal meetings were held with 16 interested delegations to discuss the USA's comments and finalise the Country Profile.

XII. Mediation as relevant to the 1980 Child Abduction (Art. 7(c)) and 1996 Child Protection (Art. 31(b)) Conventions

> 52. The SC encouraged the promotion and provision of mediation in cross-border family / international child abduction and access cases, where appropriate. The SC thanked the States and organisations for their presentations, and noted the positive progress made in the availability of mediation in various jurisdictions.

The PB introduced this agenda item by recalling the relevant C&Rs adopted on the matter at previous SC meetings (*i.e.,* C&R No 4.4 of the 2001 SC, C&R 1.3.2 of the 2006 SC, C&Rs 15 and 61 of the 2011-2012 SC and C&R No 10 of the 2017 SC). It was noted that the GGP Part V on Mediation provides substantial guidance on mediation, as does the *Practitioners' Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children*, published in December 2022.

The PB recalled discussions that took place at previous SC meetings, namely that amicable resolutions of cases, for instance through mediation, should not give rise to delays in return proceedings, nor be interpreted as acquiescence or consent to the wrongful removal or retention of children. It was noted that, based on responses to questions 18-21 of the Questionnaire on the 1980 Convention as well as question 22 of the Questionnaire on the 1996 Convention, many Central Authorities seem to be encouraging mediation, although not all Central Authorities offer those services directly. In their responses to both questionnaires, Central Authorities highlighted that specialisation in child abduction cases, cross-cultural experience and knowledge of different languages are all key factors in the success of mediation.

The 2023 SC then heard from Argentina, Australia, Japan, the Netherlands as well as REUNITE International Child Abduction Centre (an observer at the 2023 SC) regarding their experience with facilitating mediation.

In Argentina, a legal protocol was enacted to implement international treaties pertaining to child abduction. The protocol promotes mediation as an alternative to legal proceedings with various benefits. If return proceedings are ongoing, the protocol states that proceedings should not be stayed and that mediation must occur concurrently with the return proceedings, to avoid delays. Argentina also reported on their pilot project on mediation in international child abduction cases. The project applies to both return and access applications and aims to complement the protocol, improve access to justice and the implementation of international treaties by offering specialised mediation services. The form of mediation offered in Argentina is flexible and can be tailored to the needs and resources of the parties.

Australia elaborated on the Australian "co-mediation" model (*i.e.,* two-person mediation) . Under the model, the child meets with a family consultant, who is a social worker or psychologist, on the first day of return proceedings at court. The family consultant conducts a psychological assessment of the child and introduces them to the independent children's lawyer who represents their interests. The family consultant engages with the child in a child-friendly manner about their needs and, if appropriate, reinstates communication with the left-behind parent. The family consultant attends the court proceedings and provides a report to the court that is later used during mediation. When the final hearing date is set, approximately a week is set aside for mediation. It was noted that participation in mediation is voluntary and free of charge and must not delay proceedings.

According to the Japanese mediation model, mediation can be ordered with the consent of both parties at any time, but more typically, parties are referred to mediation on the first court appearance date, which takes place two weeks after the return application is filed. Similarly to the Argentinian model, mediation in Japan occurs concurrently with the proceedings. Japan reported that 65 out of a total 156 cases heard under the 1980 Convention since 2014 were settled through mediation, amounting to 42% of all cases. Additionally, it was reported that the average duration of proceedings settled by mediation was 57.9 days. Since December 2021, mediation can also be conducted via videoconference in Japan, which further facilitates access to, and the use of, mediation services.

Mediation proceedings in the Netherlands take place over a six-week period, incorporating three stages each lasting two weeks. Mediation can be ordered at a pre-trial review hearing, for cases involving Contracting States to the 1980 Convention as well as cases involving non-Contracting States. The Central Authority informs parties of the opportunity for mediation at

the earliest opportunity and mediation officers are present outside of the courtroom where the pre-trial review is held. If the parties opt for it, mediation takes place within a few days of the pre-trial review hearing. Mediations follow the "pressure cooker method" of three sessions occurring over two to four consecutive days, lasting one and a half hours. It was noted that approximately 70% of cases are referred to mediation in the Netherlands and of these, around 50% result in an agreement (either a full agreement or partial agreement).

Reunite provided an overview of the process of the mediation services they offer in incoming and outgoing 1980 Convention cases, including where the child is removed to a non-Contracting State. Reunite officers hear the history and facts of the case, whether any safeguarding issues are at stake and whether the child is old enough to speak with a specially trained mediator. Reunite then facilitates communications between the parents. It was emphasised that Reunite's mediation services sit outside of the court process and mediators do not have access to court documents. It was noted that that England's legal aid for 1980 Convention applicants covers the cost of mediation, including the cost of travel, although the majority of cases are conducted via videoconference.

XIII. International family relocation as relevant to the 1980 Child Abduction and 1996 Child Protection Conventions

53. The SC noted that the expeditious determination of international family relocation applications may strengthen the aim of the 1980 Child Abduction Convention of deterring international child abduction and encouraged the promotion of the Washington Declaration on International Family Relocation of 25 March 2010 (in annex) through a publication in the Judges' Newsletter on International Child Protection and by any other appropriate means.

54. Noting the varied approaches of States in this matter, and to ascertain the application of the principles found in the Washington Declaration, the SC proposed the development of a questionnaire by the PB directed to States to gather information about procedures that States have in place to facilitate lawful relocation.

55. The SC underlined the benefits of ratification / accession to the 1996 Child Protection Convention and of the Practitioner's Tool on Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters involving Children[7] in facilitating lawful relocation.

The PB introduced this item by noting that the topic of international family relocation had been discussed at previous SC meetings, since 2001. The PB recalled C&R No 21 of the 2017 SC (see Prel. Doc. No 1 of October 2022), wherein the SC re-emphasised the importance of securing effective access to procedures for the parties in international family relocation cases. The 2017 SC also highlighted that mediation services may assist the parties to solve these cases or prepare for outcomes and that the Washington Declaration of 25 March 2010 on Cross-border Family Relocation (see Info. Doc. No 8 of October 2023) may be of interest to competent authorities, particularly in the absence of domestic rules on this matter. The PB also recalled the recommendation of the 2017 SC that States become Parties to the 1996 Convention. Also

7 Available on the HCCH website at www.hcch.net under "Child Abduction Section".

relevant to discussions under this agenda item were the responses to question 39 of the Questionnaire on the 1980 Convention and the responses to questions 33-35 of the Questionnaire on the 1996 Convention.

The role of relocation procedures in contributing to prevent child abduction was discussed, as was the importance of direct judicial communications and the 1996 Convention in relocation cases.

Study by Asociación Internacional de Juristas de Derecho de Familia (AIJUDEFA)

AIJUDEFA presented their latest study (see Info. Doc. No 9 of October 2023). The study was prompted by the great disparity in the international relocation proceedings from State to State. The focus of the study was whether relocation processes could act as a prevention mechanism to international child abduction. It was noted that Argentina, Brazil, Chile, Colombia, El Salvador, Spain, the Dominican Republic, the UK, Uruguay, and New Jersey, USA, provided information to AIJUDEFA on their practices.

It was noted that, out of the 10 States involved in the study, only two had a specific procedure for international relocation cases. One of the key findings of the study was the amount of time proceedings took to be finalised, which varies from one to three years, except in one jurisdiction where such cases are resolved in six to eight months. AIJUDEFA cited some jurisprudence on the matter from the jurisdictions that participated in the study.

AIJUDEFA stressed the need of international standards on the subject and encouraged States to join the 1996 Convention, so that access and relocation agreements could be recognised automatically. The need to raise awareness to the 2010 Washington Declaration among judges was underlined.

The AIJUDEFA study is available in English, French and Spanish.

Following the presentation of AIJUDEFA's findings, the 2023 SC discussed possible future work in this area. There was agreement among delegates that providing for the possibility of lawful relocation is certainly part of the landscape for preventing international child abduction. Delegations recalled the recent publication of the *Practitioner's Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children* and were of the view that more time is needed after the publication of the Practitioner's Tool before further work is pursued. Nevertheless, delegates supported the idea that the PB promote the 2010 Washington Declaration and other relevant tools that are already in existence. Delegates also agreed that the PB should circulate a questionnaire among States, *to gather information about the procedures in various jurisdictions to facilitate lawful relocation.*

XIV. Contracting Parties to the 1996 Child Protection Convention

> 56. The SC welcomed the eight new Contracting Parties to the 1996 Child Protection Convention for which the Convention entered into force since the 2017 SC, namely, Barbados, Cabo Verde, Costa Rica, Fiji, Guyana, Honduras, Nicaragua and Paraguay, bringing the total number of Contracting Parties to the Convention to 54. The SC encouraged States that have not yet joined the 1996 Child Protection Convention to do so.

At plenary, it was also noted that North Macedonia signed the Convention in 2019.

From the outset of discussions on the 1996 Convention, the importance of achieving global coverage of the Convention was highlighted. It was noted that, although the 1996 Convention, which came into force in 2002, was initially applied as a complementary instrument to the 1980 Convention, it is increasingly being applied as the standalone instrument that it is.

During discussions, several delegations reported on the progress made towards becoming parties to or implementing the 1996 Convention (see responses from non-Contracting States to question 1 of the Questionnaire on the 1996 Convention - Prel. Doc. No 6B of June 2023).

XV. Evaluating and taking stock of the 1996 Child Protection Convention

> 57. The SC acknowledged the responses to the Questionnaire on the practical operation of the 1996 Child Protection Convention which confirmed that, in general, the Convention is operating effectively.

The PB reported that over 30 States (both Contracting States and non-Contracting States) had responded to the Questionnaire on the 1996 Convention (see Prel. Doc. No 6A of June 2023 and Prel. Doc. No 6B of June 2023).

Based on the responses, the main issues that were reported on the operation of the 1996 Convention related to its scope, the concept of habitual residence and the process of transferring jurisdiction under the Convention. In terms of the applicable law rules of the 1996 Convention, States reported difficulties in interpreting and applying Article 16 on the attribution or extinction of parental responsibility. States further reported that recognition and enforcement can be challenging when there is no equivalent measure in the State where the measure is to be recognised or enforced and when a substantial amount of time has passed between ordering the measure and the moment of recognition or enforcement. Most States reported that the mechanism of advance recognition under Article 24 is rarely used. Finally, it was noted that the placement of children (Art. 33) and the issue of unaccompanied and separated children required the attention of the 2023 SC.

XVI. Scope of application of the 1996 Child Protection Convention

1. Measures of protection

> 58. The SC recalled that the concept of measure of protection under the 1996 Child Protection Convention is to be interpreted broadly, given the exemplificative nature of Article 3 and being mindful of the material scope limitations set out in Article 4.

2. Articles 31(c), 32(b) and 34 of the 1996 Child Protection Convention

> 59. The SC noted that the application of Articles 31(c), 32(b) and 34, is not limited to situations of urgency.

Although in the C&R document, C&Rs 58 and 59 fall under separate sub-headings, they correspond to a single agenda item (item XIV.1) and were discussed together.

This agenda item was accompanied by a Work. Doc. containing some responses received to question 4 of the Questionnaire on the 1996 Convention (see Prel. Doc. No 6A of June 2023), the relevant provisions of the 1996 Convention (*i.e.,* Articles 3, 31, 32 and 34), relevant extracts from the 1996 Explanatory Report (*i.e.,* paras 18, 26, 141 and 144) as well as the 1996 Practical Handbook (*i.e.,* paras 3.14, 3.32, 11.24, 11.26 and 13.45). The Work. Doc. also cites relevant C&Rs from previous SC meetings (*i.e.,* C&R Nos 29 and 30 of the 2017 SC).

Based on the foregoing, the PB made some suggestions for possible C&Rs which aimed to address the concerns raised by States in their responses to the Questionnaire on the 1996 Convention. The proposal intended to clarify the broad interpretation of measures of protection under Article 3 of the 1996 Convention and link such broad interpretation to the context of the cooperation provisions under the cooperation provisions of the Convention.

There was general support among delegates for the proposal of the PB in the Work. Doc, subject to some refining undertaken by the Drafting Committee.

XVII. Jurisdiction issues under the 1996 Child Protection Convention

1. The rules on jurisdiction form a complete and closed system which applies as an integral whole to Contracting Parties

60. The SC noted that the rules on jurisdiction contained in Chapter II of the 1996 Child Protection Convention form a complete and closed system, which applies as an integral whole to Contracting Parties. This "complete and closed system" does not allow for conflicting grounds of jurisdiction among Contracting Parties and, as an "integral whole", may necessitate communication between competent authorities when taking, assuming or transferring jurisdiction under the Convention.

61. The SC recalled that, under the 1996 Child Protection Convention, through communication, only one competent authority may take primary jurisdiction at a given time, over a specific matter, thus avoiding conflicting decisions being issued on matters falling under its scope.

This agenda item was accompanied by a Work. Doc. containing responses to question 2 of the Questionnaire on the 1996 Convention, which asked States to report on significant jurisprudence regarding the 1996 Convention (see Prel. Doc. No 6A of June 2023). The Work. Doc. also cited relevant extracts from the 1996 Explanatory Report (*i.e.,* para. 84) and the 1996 Practical Handbook (*i.e.,* para. 3.12).

During discussions, it was noted that the 2000 and 1996 Conventions share many common features from a technical point of view. To facilitate discussions, the PB included a proposal in the Work. Doc., stating that the rules on jurisdiction contained in Chapter II of the 1996 Convention form a "complete and closed system" which does not allow for conflicting jurisdiction among Contracting States. The need for coordination among competent authorities was highlighted, only one competent authority may take jurisdiction at a given time over a specific matter under the 1996 Convention, thus avoiding conflicting decisions.

There was general support among delegates for the proposal in the Work. Doc. and the language was adopted with some minor amendments.

2. Change of habitual residence under Articles 5(2), 34 and 36 of the 1996 Child Protection Convention

> 62. The SC recalled that, under Article 5(2), where the habitual residence of the child changes to another Contracting State, the competent authorities of the new habitual residence will have primary jurisdiction. The change of habitual residence is a question of fact which will be assessed by the competent authority called upon to make a decision on this matter. The competent authority seised could consult, if necessary, the competent authorities of other States to obtain relevant information by making use of the means of cooperation as provided under the Convention, such as Articles 30, 34 and 36. The SC further noted that this process should be conducted diligently and without delay.

This agenda item was accompanied by a Work. Doc. containing some responses received to question 2 of the Questionnaire on the 1996 Convention (see Prel. Doc. No 6A of June 2023). It also cited relevant provisions of the 1996 Convention (*i.e.,* Arts 5, 34 and 36) as well as relevant extracts from the 1996 Explanatory Report (*i.e.,* paras 41 – 43, 144 and 150). The Work. Doc. included a proposal by the PB, with a view to further facilitate discussions.

In their responses to question 2 of the Questionnaire on the 1996 Convention, some States reported on court decisions that had been recently issued pertaining to habitual residence and the absence of the *perpetuatio fori* principle in the 1996 Convention. In particular, reference was made to the CJEU ruling on a case concerning proceedings in Sweden and the Russian Federation, which dealt with the applicability of the *perpetuatio fori* principle contemplated in Article 8(1) of the Brussels II bis Regulation. The decision clarifies that, contrary to Brussels II bis, the 1996 Convention does not adopt the principle of *perpetuatio fori* and instead reflects the view that the concept of habitual residence is a factual one and as such, can change during proceedings.

It was noted that a change of habitual residence implies both the loss of a former habitual residence and the acquisition of a new one. This can occur instantaneously, or there may be a lapse of time in between the loss and acquisition. Determining the habitual residence of the child is a question of fact and the competent authority called upon to make a decision on this matter will make this assessment. The utility of cooperation under Articles 34 and 36 of the 1996 Convention was highlighted, as competent authorities can request and share information regarding a particular child's change of habitual residence.

There was broad support for the proposal contained in the Work. Doc., although some delegations expressed the view that the language could be softened, a request which was taken on board by the Drafting Committee.

3. Definition of "urgency" under Article 11 of the 1996 Child Protection Convention

63. The SC underlined that it is for the competent authorities of the territory in which the child or their property is present to determine whether a particular situation is "urgent". In making this assessment, competent authorities should consider whether the child in question is likely to suffer irreparable harm or if their interests will be compromised if protection is not pursued immediately but is only sought through the normal channels of Articles 5 to 10.

This agenda item was accompanied by a Work. Doc. containing some responses from States to question 10 of the Questionnaire on the 1996 Convention, which asked States to report whether competent authorities faced any issues with respect to the application of Article 11 (see Prel. Doc. No 6A of June 2023). The Work. Doc. cited the text of Article 11 of the 1996 Convention as well as relevant extracts from the 1996 Explanatory Report (*i.e.,* paras 68 and 70) and the 1996 Practical Handbook (*i.e.,* paras 6.2 – 6.4). As a point of departure for discussions, the PB also made a suggestion for a C&R.

In their responses, a few States noted that they experienced some challenges in terms of the application of Article 11 of the Convention, particularly in defining the term "urgency" and understanding what measures would fall within the scope of Article 11.

According to the 1996 Explanatory Report, there is no definition of the term "urgency" in the Convention itself. The Explanatory Report suggests that if the normal channels of Articles 5 to 10 will not sufficiently address the situation at hand and this results in irreparable harm to the child, such a situation can be considered urgent. The Practical Handbook adds that the concept of "urgency" should be interpreted rather strictly and provides some helpful examples as to what situations can be considered urgent for the purposes of Article 11.

In terms of what measures might fall within the scope of Article 11, the Explanatory Report elaborates that it was a conscious decision by the drafters not to set out what measures can be taken on the basis of this ground, as this provision serves as a "functional concept" and the urgency of each situation will dictate what measures need to be taken in that particular case.

There was consensus among delegates to adopt the proposal made in the Work. Doc, with some minor editorial amendments.

4. Communication regarding jurisdiction issues and direct judicial communications (Arts 5-12 and 44)

64. The SC noted that competent authorities may need to communicate about jurisdiction for the purpose of Article 13, for example in the case of divorce proceedings when the competent authority seised under Article 10 is not that of the State of the habitual residence of the child (Art. 5) or in the case of a transfer of jurisdiction (Arts 8 and 9). The SC further noted that the competent authorities may need to communicate about jurisdiction to ensure that competent authorities having jurisdiction under Articles 5 to 10 have taken the measures required by the situation in accordance with Article 11(2) when urgent measures have been taken under Article 11(1).

65. In respect of communications between competent authorities (*i.e.*, judicial and administrative authorities) about jurisdiction, the SC recalled the General Principles for Judicial Communications[8] (Principles 6.1-6.3 and 7.5) within the context of the IHNJ which apply to the 1996 Child Protection Convention. The SC noted that, for the purposes of the 1996 Child Protection Convention, these Principles would be equally applicable to both judicial and administrative authorities.

This agenda item was accompanied by a Work. Doc. containing some responses from States to question 10 of the Questionnaire on the 1996 Convention (see Prel. Doc. No 6A of June 2023). The Work. Doc. cited the relevant provisions of the 1996 Convention (*i.e.,* Arts 5 – 13 and 44), as well as some relevant principles from the *Emerging Guidance and General Principles for Judicial Communications*. The Work. Doc. also cited relevant C&Rs adopted during previous SC meetings (*i.e.,* C&R No 5.6 from the 2001 SC, C&R No 1.6.3 from the 2006 SC and C&R Nos 40 and 66 from the 2011-2012 SC). Based on the foregoing, the PB also made a suggestion for a C&R.

Some delegations noted that communication between Central Authorities is essential and expressed concern that the proposed C&Rs focused on the IHNJ and direct judicial communications without making due reference to the role of Central Authorities in this regard. It was, therefore, agreed that the C&Rs ought to make reference to judicial as well as to administrative authorities.

5. Transfer of jurisdiction under Articles 8 and 9 of the 1996 Child Protection Convention

66. The SC invited Contracting Parties, which have not done so already, to consider designating, in accordance with the Emerging Guidance regarding the Development of the IHNJ,[9] one or more members of the judiciary for the purpose of direct judicial communications within the context of the IHNJ.

67. Recalling Article 44 of the 1996 Child Protection Convention, the SC encouraged Contracting Parties to designate the authorities to which requests under Articles 8 and 9 are to be addressed, as such a designation could greatly assist in improving the processing times of requests for a transfer of jurisdiction. Depending on domestic policies and requirements relating to the judiciary, Contracting Parties may choose to designate a member of the IHNJ (if applicable) and / or the Central Authority to receive requests for transfers of jurisdiction.

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8 See Direct Judicial Communications – Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges, available on the HCCH website at www.hcch.net under "Child Abduction Section".

9 *Ibid*.

68. The SC encouraged authorities requesting a transfer of jurisdiction, in the first place, informally to consult their counterparts in the requested State, to ensure that their requests are as complete as possible and that all necessary information and documentation is furnished from the outset to meet the requirements of the requested State.

69. Recalling Principle 9 of the Emerging Guidance regarding the Development of the IHNJ, the SC encouraged Central Authorities that are involved in a transfer of jurisdiction request and judges engaging in direct judicial communications pertaining to a request for a transfer of jurisdiction to keep one another informed regarding the progress and outcome of such a request. Doing so could further assist in addressing delays and enhance the efficiency of processing requests under Article 8 or 9 of the 1996 Child Protection Convention.

70. The SC invited the PB to circulate the questionnaire annexed to Prel. Doc. No 17 of August 2023[10] to all Contracting Parties to the 1996 Child Protection Convention, with a view to collecting information from judges and Central Authorities regarding requests under Article 8 or 9. The SC further invited the PB to review Prel. Doc. No 17, in the light of the responses from Contracting Parties, and to submit the revised version of Prel. Doc. No 17 to CGAP. The SC noted that it will be for CGAP to determine the next steps in this area.

This agenda item was accompanied by Prel Doc. No 17 of August 2023. Also relevant to discussions were the responses to question 8 of the Questionnaire on the 1996 Convention (see Prel. Doc. No 6A of June 2023), paragraphs 44-45 and 68-69 of the 1996 Explanatory Report and paragraphs 4.13-4.19, 6.2-6.5 and 13.58-13.60 of the 1996 Practical Handbook.

To gather additional information on the process of transfer of jurisdiction, from the perspective of judges, the PB circulated a questionnaire to the Members of the IHNJ in June 2023, asking them about their practical experience with the process of transferring jurisdiction both under the 1996 Convention but also under the Brussels Regulations (IIa and IIb). Prel. Doc. No 17 is based on the responses received from the Members of the IHNJ.

From the responses received, some trends in the process of transferring jurisdiction across the 1996 Convention and the Brussels Regulations were identified. The facilitating role played by Central Authorities in such processes was noted. However, it was also noted that there is great divergence in how transfer requests operate in practice and that processing times vary greatly from jurisdiction to jurisdiction. In the spirit of optimising and perhaps streamlining the procedure for requests for a transfer of jurisdiction under the 1996 Convention, the PB made some suggestions for C&Rs, for the consideration of the 2023 SC.

The PB also requested permission from the 2023 SC to circulate the same questionnaire that was circulated to IHNJ Members (which can be found in the Annex to Prel Doc. No 17) to all Contracting States to the 1996 Convention, in order to collect more information from judges and to include information from Central Authorities that play a facilitating role in the area of

10 "Transfer of jurisdiction under the 1996 Child Protection Convention (Arts 8 and 9)", Prel. Doc. No 17 of August 2023, available on the HCCH website at www.hcch.net (see path indicated in note 7).

transfer of jurisdiction. Based on the additional responses, the PB suggested to revise Prel. Doc. No 17 and submit its findings to CGAP.

During discussions, delegates acknowledged the clear advantages in streamlining the procedure for requests for a transfer of jurisdiction under the 1996 Convention and in understanding how requests for a transfer of jurisdiction operate in other States. There was clear consensus among delegates that the questionnaire on transfer of jurisdiction be re-circulated to all Contracting States, in order to gather a larger sample of responses. Delegates also welcomed the fact that Central Authorities will also have the opportunity to respond to the questionnaire as, in some States, the request for a transfer is made by administrative authorities.

The proposal for C&Rs made by the PB in Prel. Doc. No 17 was adopted with some minor editorial amendments.

XVIII. Applicable law under the 1996 Child Protection Convention

2. Determining parental responsibility and rights of custody

71. The SC noted that, in cases of child abduction where both the 1980 Child Abduction and the 1996 Child Protection Conventions are applicable, the provisions of Chapter III, in particular Articles 16 and 21 of the 1996 Child Protection Convention, are relevant to the determination of the law applicable to parental responsibility and custody rights.

This agenda item was accompanied by a Work. Doc. containing some responses from States to question 37 of the Questionnaire on the 1996 Convention (see Prel. Doc. No 6A of June 2023). The Work. Doc. cited the relevant provisions of the 1996 Convention (*i.e.,* Arts 16 and 21), as well as some relevant extracts from the 1996 Explanatory Report (*i.e.,* paras 100, 102, 106 and 116) and the 1996 Practical Handbook (*i.e.,* paras 9.13, 9.15 and 9.24). Based on the foregoing, the PB also made a suggestion for a C&R.

During discussions, it was noted that the 1996 Convention is applicable in child abduction situations and will apply regardless of whether or not the applicable law is one of a Contracting Party. There was general support among delegates for the proposal contained in the Work. Doc., although delegates preferred to make reference to Chapter III of the 1996 Convention as a whole, highlighting that other provisions could potentially be relevant, in addition to Articles 16 and 21, such as Article 22.

XIX. Recognition and enforcement of measures of protection under the 1996 Child Protection Convention

1. Recognition of measures by operation of law under Article 23(1) of the 1996 Child Protection Convention

72. The SC reiterated that the provision under Article 23(1) entails that the effects of a measure, as they exist in the domestic legal system of the Contracting Party where the measure was taken, are recognised in another Contracting Party without the need of any further action or special processes (*i.e.*, automatically).

73. The SC noted that the use of a certificate under Article 40 would facilitate the recognition of measures by operation of law under Article 23(1).

This agenda item was supported by a Work. Doc. containing some responses from States to question 13 of the Questionnaire on the 1996 Convention, which asked whether States experienced any challenges in relation to the recognition of measures under the 1996 Convention from the perspective of the Requested State (see Prel. Doc. No 6A of June 2023). The Work. Doc. cited the relevant provision of the 1996 Convention (*i.e.,* Art. 23), as well as some relevant extracts from the 1996 Explanatory Report (*i.e.,* para. 119) and the 1996 Practical Handbook (*i.e.,* paras 10.1 and 10.3). Based on the foregoing, the PB also made a suggestion for C&Rs to further facilitate the discussion.

In their responses to the Questionnaire on the 1996 Convention, a few States reported that they did experience some issues with the recognition of foreign measures. In particular, some States were unsure whether the foreign measure (*e.g.,* a decision on access) can be recognised in their territory as it is or if a competent authority of their State needs to issue its own order, such as a mirror order, to give effect to the foreign measure.

During discussions, it was noted that the 1996 Explanatory Report and Practical Handbook clarify that the provision under Article 23, that measures shall be recognised by operation of law, means that it will not be necessary to commence any proceedings for the measure to be recognised in the requested State. The effects of the measure will be produced in the requested State automatically, in circumstances where there is voluntary compliance or lack of opposition to the said measure. In this regard, the utility of the certificate under Article 40 was noted, which could facilitate the recognition of measures by operation of law.

Many delegates noted that the issue with the recognition of measures by operation of law was not interpretational or legal but, rather, a practical issue. In some States, institutions can only operate if they have received a mandate to do so by a judicial authority. In other cases, decisions issued in other States are rather detailed in terms of practical arrangements, making it challenging for the authorities in the Requested State to fully meet all the requirements. In this regard, it was noted that the information contained in the future Country Profile under the 1996 Convention could be useful in overcoming practical challenges to the recognition of measures.

There was general support from delegates for the proposal contained in the Work. Doc., with a preference expressed to slightly amend the language to further align the text with the language of the Convention, which was taken on board by the Drafting Committee.

2. Enforcement of measures in accordance with the law of the requested State to the extent provided by such law under Articles 26 and 28 of the 1996 Child Protection Convention

74. The SC recalled Article 26(1) of the 1996 Child Protection Convention which provides that, where measures taken in one Contracting Party require enforcement in another Contracting Party, such measures shall, upon request of an interested party, be declared enforceable or registered for the purpose of enforcement in that other Contracting Party, in accordance with the procedures foreseen by its domestic law. The SC noted that not all measures of protection require

enforcement under Article 26. The SC noted that measures that require enforcement can include, for example, the forced sale of property or the enforcement of a decision taken by a competent authority in another State concerning a parent who refuses to abide by the orders made by that competent authority.

75. In the context of requests for declarations of enforceability or registrations for the purpose of enforcement, the SC invited Contracting Parties (in relation to their laws) and competent authorities (in relation to their procedures) to differentiate between those measures that require enforcement and those that do not.

76. The SC also recalled Article 28 of the 1996 Child Protection Convention which provides that, once a measure taken in one Contracting Party has been declared enforceable or has been registered for the purpose of enforcement in another Contracting Party, the measure shall be enforced in the other Contracting Party as if it had been originally taken there, in accordance with its domestic law.

This agenda item was supported by a Work. Doc. containing responses from States to question 17 of the Questionnaire on the 1996 Convention, which asked whether States experienced any challenges with the enforcement of measures under Articles 26, 27 and 28 (see Prel. Doc. No 6A of June 2023). The Work. Doc. cited the relevant provisions of the 1996 Convention (*i.e.,* Arts 26 and 28), as well as some relevant extracts from the 1996 Explanatory Report (*i.e.,* paras 132 and 134) and the 1996 Practical Handbook (*i.e.,* paras 10.22 – 10.28). Reference was also made to C&Rs adopted by a previous meeting of the SC on the subject (*i.e.*., C&R Nos 48 and 49 of the 2017 SC).

In their responses to the Questionnaire on the 1996 Convention, most States reported that they faced no issues in the area of enforcement. However, one State reported some difficulties in defining what constitutes "*actes d'exécution*" (acts of enforcement) within the meaning of Article 26.

During discussions, it was noted that the 1996 Explanatory Report provides some examples of what type of measures could require enforcement, such as a forced sale of property or a coercive measure of some sort. The Explanatory Report clarifies that such measures will have to be subject to a declaration of enforceability or be registered for the purpose of enforcement in the other Contracting State. The Explanatory Report refers to the declaration of enforceability under Article 26 as a kind of naturalisation of the measure. Additionally, the Explanatory Report and the Practical Handbook both note that the procedure under Article 26 must be simple and rapid.

Another element which may be useful is to take into account the use to which the procedure under Article 26 is put. If, for example, the procedure involves the declaration of enforceability of an access order, the procedure should very much take into consideration the period of time in which the order will need to be relied upon. If, for instance, one needs to rely on an access order within the next weeks, the procedure under Article 26 should be carried out in a matter of days.

Based on the foregoing, the PB made some suggestion for C&Rs in the Work. Doc., which aimed to give a bit more detail to the procedure under Article 26 and recall Article 28, which provides that once measures taken in one Contracting State have been declared enforceable

or registered for the purpose of enforcement, those measures shall be applied in another State as though they had been taken there.

There was general agreement among delegates to adopt the proposal contained in the Work. Doc. However, delegations were not partial to the language of the second sentence of C&R No 74, which originally read "[…] measures for the protection of a child only exceptionally require enforcement under Article 26." The Drafting Committee later amended the text to read "[…] not all measures of protection require enforcement under Article 26", which met the approval of delegations.

3. Describing the grounds of jurisdiction and the measures of protection in the decision to facilitate its recognition and enforcement

77. The SC noted that, in order to facilitate the recognition and enforcement of measures of protection, the competent authority should carefully describe those measures in the decision.

78. To further facilitate recognition and enforcement of a measure of protection and avoid nonrecognition on the grounds of Article 23(2)(a), the SC added that the competent authority taking the decision should carefully describe the grounds upon which it based its jurisdiction, including when jurisdiction is based on Article 11(1).

This agenda item was supported by a Work. Doc. containing responses from States to questions 10 and 13 of the Questionnaire on the 1996 Convention (see Prel. Doc. No 6A of June 2023). The Work. Doc. also cited the relevant C&Rs adopted by a previous meeting of the SC on the subject (*i.e.,* C&R No 50 of the 2017 SC). Based on the foregoing, the PB made some suggestion for C&Rs in the Work. Doc.

During discussions, it was noted that a detailed description of the content of the measure within the decision issued by a competent authority would be useful in facilitating the recognition and enforcement of measures taken in another State. Delegates agreed that this practice will assist competent authorities in better understanding the foreign measure and may help them in identifying similar measures in their own national systems, so as to better put the foreign measure into effect in their territory. This would ultimately avoid non-recognition on the ground of Article 23(2)(a) of the 1996 Convention.

There was general support for the proposal in the Work. Doc. and the text was adopted with some editorial amendments.

XX. Cooperation and general provisions under the 1996 Child Protection Convention

1. Elements to consider as to where to establish a Central Authority under the 1996 Child Protection Convention

79. The SC underlined that the location of Central Authorities is integral to their role under the 1996 Child Protection Convention, including to facilitate communication and cooperation with other Central Authorities, as well as competent authorities in their State. The SC recalled that careful consideration should be given to the benefits of

co-locating Central Authorities under the 1980 Child Abduction and 1996 Child Protection Conventions in the same body. The SC further recalled that the preferred location of a Central Authority may be proximate to offices undertaking functions related to the Convention's subject matter.

This agenda item was supported by a Work. Doc. which cited the response from one State to question 51 of the Questionnaire on the 1996 Convention, asking States to identify any additional topics for discussion at the 2023 SC (see responses to question 3 in Prel. Doc. No 6B of June 2023). In their response to that question, one State requested additional information as to the important elements to consider in determining where a Central Authority under the 1996 Convention should be located.

Relevant to this question were Articles 29 and 30 of the 1996 Convention as well as paragraphs 138-139 of the 1996 Explanatory Report and paragraphs 11.1 – 11.9 of the Practical Handbook. The GGP Part I on Central Authority Practice under the 1980 Convention also includes some useful information (see paras 2.3.1 – 2.3.3). The Work. Doc. cited all the aforementioned relevant extracts and also included an analysis conducted by the PB which examined where the Central Authorities of all the Contracting States to the 1996 Convention were located. The analysis showed that most Central Authorities for both the 1996 and 1980 Conventions are located within the Ministries of Justice, and that the second most common institution where the Central Authority is located is the Ministry of Social Affairs. It was found that, in 48 out of 54 Contracting States, the Central Authority for the 1996 Convention was located within in the same institution as the Central Authority for the 1980 Convention.

Delegates highlighted the practicality of combining the Central Authorities under the 1980 and 1996 Conventions. However, some noted that it may not be necessary that the Central Authority be proximate to offices undertaking functions related to the Convention subject matter, as in many States social welfare authorities are usually located throughout the country and electronic means of communication as well as online meetings allow for efficient and effective communication between the authorities regardless of distance.

Based on the foregoing, the PB made a suggestion for a C&R in the Work. Doc. which was adopted by delegations with a small editorial amendment to reflect that the location of a Central Authority being proximate to offices undertaking functions related to the Convention subject matter is optional.

2. General duty to cooperate under Article 30 of the 1996 Child Protection Convention

80. The SC noted that in addition to cooperating in relation to matters provided for under Articles 31 to 36, Central Authorities are also strongly encouraged to cooperate regarding other matters, under Article 30, to achieve the purposes of the 1996 Child Protection Convention.

81. In addressing any practical problems concerning the proper functioning of the Convention, the SC strongly encouraged Central Authorities to engage in dialogue and noted that, where a group of Central Authorities share a common problem, consideration should be given to having joint meetings which might, in some cases, be facilitated by the PB.

This agenda item was supported by a Work. Doc. which cited the relevant provision from the 1996 Convention, namely Article 30, which contains a general obligation for Central Authorities to cooperate between each other and promote cooperation between the competent authorities in their States. The Work. Doc. also contained relevant extracts from the 1996 Explanatory Report (*i.e.,* para. 139) and Practical Handbook (*i.e.,* para. 11.10) as well as relevant C&Rs from previous SC meetings (*i.e.,* C&R Nos 35 - 41 and 44 of the 2017 SC).

Based on the foregoing, the PB made some suggestions for C&Rs to facilitate the discussion. Through the first suggestion, the PB sought to clarify whether there was consensus among the 2023 SC that, under Article 30, Central Authorities may cooperate on matters which may not squarely fall within the scope of Articles 31 – 36 but that may nonetheless be pertinent to the operation of the 1996 Convention. This may be, for instance, in the case of a runaway child who is located in another State and the whereabouts of the child's parents in another State need to be located through cooperation. Where common practical issues arise, the PB suggested that Central Authorities consider the possibility of conducting joint meetings, with the assistance of the PB, to exchange ideas and information.

There was consensus among delegates to adopt the suggested language contained in the Work. Doc. without amendments.

3. Consideration of the development of a certificate for Article 40

The development of a certificate under Article 40 of the 1996 Convention was first discussed during the 2017 SC. At the time, there was no consensus to develop such a certificate. During the 2023 SC, the possible development of a certificate was put forward by the PB once again for consideration. The PB reminded delegates of the certificate which was developed under the 2000 Protection of Adults Convention, the use of which was encouraged during the First Meeting of the SC on the practical operation of the Convention, as it could facilitate the cross-border circulation, recognition and enforcement of measures of protection and, as such, increase legal security, certainty, and predictability.

Although some delegates considered that a certificate under Article 40 would be highly useful and supported the idea of its development, there was no consensus among delegations to develop such a certificate at this time.

XXI. Placement or provision of care of the child in another Contracting Party under Articles 3(e) and 33 of the 1996 Child Protection Convention

The PB introduced this agenda item by recalling that Article 33 establishes the only mandatory consultation mechanism in the Convention. Article 33 enables the authority in the receiving State to review the possible placement of a child in their State before consenting to it and determining its conditions.

This topic was supported by Prel. Doc. No 20 of September 2023 and a Work. Doc. which contained a proposal by the PB to facilitate the discussion. The Prel. Doc, *inter alia,* analysed the responses received from States to questions 1, 3, 23 – 27 and 48 of the Questionnaire on the 1996 Convention (see Prel. Doc. No 6A of June 2023), in order to identify the challenges pertaining to the scope and application of Article 33. In doing so, the Prel. Doc. also

endeavoured to offer some practical guidance to Central and competent authorities in relation to Article 33 procedures and identify potential areas for future work.

Also relevant to the discussions were paras 23 and 143 of the 1996 Explanatory Report and paras 3.25-3.28, 11.13- 11.17 and 13.31-13.42 of the 1996 Practical Handbook, as were the C&Rs adopted during previous SC meetings (C&R Nos 31, 32, 42 and 43 of the 2017 SC).

Delegates discussed the first suggestion contained in the Work. Doc. submitted by the PB, which related to the general procedure under Article 33, before discussing the rest of the suggestions contained in the Work. Doc., which related to the scope of Articles 3(e) and 33, as a whole. Subsequently, delegates proceeded to discuss possible future work in this area.

1. General Procedure

82. The SC underlined that the general procedure under Article 33 includes the following minimum steps:
    a. The competent authority of the State which is contemplating the measure of alternative care must consult the Central Authority or competent authority in the State where it is proposed that the measure will be exercised by:
        i. discussing the possibility of such a placement in the receiving State;
        ii. transmitting a report on the child;
        iii. explaining the reasons for the proposed placement or provision of care outside the requesting State and in the requested State.
    b. The Central Authority or competent authority of the State where it is proposed that the measure will be exercised gives its consent to the proposed placement or provision of care.
    c. If the requested State has consented to the placement or provision of care, taking into account the child's best interests, the competent authority of the requesting State then issues its decision.

The PB's first suggestion for a C&R in the Work. Doc., on the general procedure under Article 33, intended to address and clarify the key issues and concerns raised by States in their responses to the Questionnaire on the 1996 Convention (see Prel. Doc. No 6A of June 2023).

There was consensus among delegates to adopt the first suggestion in the Work. Doc. submitted by the PB, with some technical and editorial amendments.

2. Scope of Articles 3(e) and 33 of the 1996 Child Protection Convention

83. The SC agreed that the placement of the child in a foster family or in institutional care, or the provision of care by kafala or an analogous institution (*i.e.*, alternative care arrangements) that fall under the scope of Articles 3(e) and 33 of the 1996 Child Protection Convention are measures of protection decided by a competent authority (*i.e.*, judicial or administrative authority (*e.g.*, a government youth and welfare agency, a social worker)) to protect and assist children who

are usually temporarily or permanently deprived of their family environment, or cannot remain in their family environment as it would not be in their best interests. In a cross-border context, the SC understood that the two States involved in the placement (*i.e.*, the requesting State (State of origin) and the requested State (receiving State)) share the responsibility to protect and assist the child, which explains the mandatory nature of the consultation provided for under Article 33.

84. The SC noted that purely private arrangements resulting in an informal care placement do not fall within the scope of Article 33, as such placements are not decided by a competent authority.

85. The SC noted that a child travelling abroad for tourism purposes with their foster parent from their State of habitual residence is not a placement abroad and, therefore, does not fall within the scope of Article 33.

86. The SC further noted that the authority of a person who has the care of a child in particular circumstances, such as when they are attending school or a summer camp abroad, would be covered under Article 3(d).

87. Considering that, in general, notaries reflect and give legal validity to the wishes of the party(ies) in private agreements or unilateral acts, they would not be considered a "competent authority" deciding a measure of alternative care. Therefore, the SC further noted that private arrangements in the form of an agreement or unilateral act, including a notarial kafala, validated by a notary do not fall within the scope of Article 33.

88. The SC noted that, in several States, relatives have to be eligible and suitable in accordance with the law to provide alternative care.

89. The SC noted the possibility for competent authorities to make use of Article 34 to request information relevant to possible measures of protection of the child, if the situation of the child so requires, under the Convention. Authorities are encouraged to consider making use of Article 34 in preparation for a request under Article 33.

During discussions, it was noted that there was uncertainty about the scope of Article 33 amongst States, particularly what types of placements trigger the application of Article 33 and whether the duration of a placement has an effect on whether or not a measure falls within the scope of Article 33.

Many delegates also mentioned that they regularly encounter cases where the consultation mechanism under Article 33 has not been complied with prior to the decision on placement, which is contrary to the best interests of the child and the 1996 Convention.

From the outset, it was underlined that the involvement of a competent authority in the process of placing a child in a foster family or in institutional care under Articles 3(e) and 33 is essential. For placements intended to take place abroad, delegates acknowledged that the authorities of both States involved share the responsibility of protecting and assisting the child, which is why the consultation mechanism under Article 33 is the only mandatory

consultation mechanism in the entire Convention. As such, there was broad support to adopt the language of the second suggestion contained in the Work. Doc. submitted by the PB, with some slight linguistic adjustments to the French version.

Early into the discussion, it also seemed to be rather clear among delegates that purely private, informal placement arrangements do not fall within the scope of Article 33, precisely due to the lack of involvement of a competent authority. Delegates expressed concern with the term "approved" used in C&R No 42 of the 2017 SC, noting the complexity that comes with a judicial or administrative authority approving a private arrangement when it has not taken an active role in any prior consultation process and cannot make any subsequent amendments to the arrangement. Delegates considered the language of the suggestion in the Work. Doc. on this issue to be a basic interpretational principle of Article 33. There was, therefore, consensus to adopt the suggestion as drafted and move the paragraph up, becoming C&R No 84.

Delegates further agreed that travels abroad with foster parents for tourism purposes or to attend summer schools abroad are also excluded from the scope of Article 33. There was a divergence of views among delegates with regards to the original language proposed in the Work. Doc. pertaining to the term "vacation", with some delegations wanting to see more precise language and others wanting to retain the language as proposed. In the end, consensus was reached to adopt the suggestion in the Work. Doc. but with substituting the term "vacation" for "tourism". The use of the term "vacation" created some difficulties for some States because some children are placed abroad in some kind of alternative care arrangement, sometimes with their foster parents, for "vacation" purposes which would make this measure fall under Article 33. There was also consensus to adopt the suggested C&R pertaining to summer schools as drafted.

During discussions, delegates acknowledged that, in some circumstances, it can be difficult to define the term "authority" for the purposes of Article 33 and ascertain which institutions fall within or outside this term. In the same vein that private agreements subsequently "approved" by a competent authority posed some difficulties, it was noted that private arrangements that are later validated and / or formalised by a notary would be beyond the scope of Article 33, since a notary does not render a "decision" in the way a competent authority does and the involvement of a competent authority in the Article 33 process is fundamental. On this point, there was consensus among delegates to adopt the language contained in the Work. Doc. as drafted.

In their responses to question 23(a) of the the Questionnaire on the 1996 Convention, States reported that that some receiving States refuse to apply Article 33 when there is a decision of an authority to place a child with relatives abroad. In addition, the domestic law of some States does not consider these measures as an alternative care measure that would fall under the scope of Article 33. In this regard, it was recalled that, in many States, in order for a child to be placed with their relatives, those relatives have to be certified and / or registered as foster parents in accordance with the law of the State. There was consensus among delegates to adopt the language suggested in the Work. Doc. on this issue, with some editorial amendments.

Delegates also welcomed the suggestion that reference be made to Article 34 of the 1996 Convention, to account for cases where the placement has been made in one State and the foster family wants to relocate to another State for a certain period of time. In those circumstances, it was noted that prior to the relocation, a request is sent to the State the foster family wishes to relocate to, in order to consult about the relocation and available monitoring modalities. Delegates with experience with such cases emphasised that, in these circumstances, consultation takes place under Article 34 of the 1996 Convention rather than being dealt with as an Article 33 placement. In response, other delegations noted that such relocations would not fall within the scope of Article 33, as this would be a matter of recognition and enforcement of a measure under Article 3(e) rather than an Article 33

placement. The Work. Doc. submitted by the PB also contained some suggested language making reference to Article 34, which was adapted to reflect the discussion at plenary encouraging States to consider making use of Article 34 in preparation for a request under Article 33.

3. Future work

90. The SC recommended that the PB starts collecting information on the operation of Article 33 from Contracting Parties in addition to that set out in Prel. Doc. No 20,[11] and, that a Working Group (WG) be established to develop: (a) a model form for cooperation under Article 33; and (b) a guide on the operation of Article 33.

There was broad support among delegates to establish a WG tasked with the development of a Guide on the scope and application of Article 33 of the Convention and a Model Form for cooperation regarding matters relating to Article 33.

XXII. Unaccompanied and separated children and the application of the 1996 Child Protection Convention

91. The SC thanked the States and organisations for their informative presentations on this issue and welcomed the participation of the PB in the Consultation Group on Children of Ukraine (CGU) from the Council of Europe where private international law issues in connection with the 1996 Child Protection Convention would be discussed.

In their responses to the Questionnaire on the 1996 Convention (see Prel. Doc. No 6A of June 2023), several States brought up the issue of the protection of children present in their State but who are habitually resident in another State, unaccompanied and separated children, refugee children and children who have been displaced from Ukraine (see responses to questions 1, 3, 5 and 43 of the Questionnaire).

The PB introduced the item by recalling the document on *The Application of the 1996 Child Protection Convention to Unaccompanied and Separated Children*. This document, prepared in 2017 and approved by CGAP in 2020, has been available on the HCCH website since February 2023. It was recalled that this tool is the result of a considerable collaborative effort between the PB and several HCCH Members and International Organisations. This document intends to help legal practitioners, judges and professionals (*e.g.*, child welfare / protection officials and enforcement officers) with responsibilities in the protection of unaccompanied and separated children to better understand the Convention, where it applies.

[11] "Placement or provision of care of the child in another Contracting State under the 1996 Child Protection Convention (Art. 33)", Prel. Doc. No 20 of September 2023, available on the HCCH website at www.hcch.net (see path indicated in note 7).

The PB further recalled the information note it prepared specifically on the issue of children deprived of their family environment due to the armed conflict in Ukraine, published on 16 March 2022 (see Info. Doc. No 12 of October 2023) and the factsheet prepared by the European Judicial Network in civil and commercial matters (EJN) on the situation of refugee children from Ukraine displaced in the European Union (see Info. Doc. No 13 of October 2023), both of which were relevant to discussions under this agenda item.

The PB also made reference to Info. Doc. No 11 of October 2023 which contains the procedural framework for the care of unaccompanied Moroccan minors, published in February 2021 by the Ministry of Justice of France. The document is available in French only.

On this agenda item, several States and International Organisations, including Ukraine, France, the European Commission, UNICEF and UNHCR, were invited to make presentations and provide updates on their activities in this field within their respective jurisdictions / mandates. The need for consistency and uniform application of the various relevant international treaties including the 1996 Convention was highlighted.

Shortly after the 2023 SC, the PB also participated in the Council of Europe Consultation Group on the Children of Ukraine (CGU), the mandate of which was presented during the 2023 SC, chairing the thematic Dialogue Group on Transnational Procedures and Cooperation. The CGU was established in response to the situation of the children of Ukraine who have been evacuated to / displaced in Council of Europe Member States and aims to facilitate co-operation between States, the European Union and relevant international organisations. The Council of Europe underscored that the initiative was launched at the request of Ukraine.

Following the 2023 SC, the PB proceeded to update the document on *The Application of the 1996 Child Protection Convention to Unaccompanied and Separated Children* in the light of the discussions that took place at the SC and further discussions that took place during a January 2024 Roundtable involving CAs and Members of the IHNJ from Members of the Council of Europe on the application of the 1996 Convention in the context of the war in Ukraine. The updated document was presented to CGAP at its 2024 meeting (Prel. Doc. No 10 of January 2024), during which Members had the opportunity to make comments. Following discussions at CGAP, the PB was mandated to convene informal meetings for interested HCCH Members and Contracting Parties to the 1996 Convention to discuss the additions and finalise the document.

In April 2024, the PB held two informal meetings with the participation of interested States and International Organisations, during which the document was finalised. At the time of writing, the updated document has been adopted by HCCH Members through a written procedure.

XXIII. Tools to assist with the implementation of the 1996 Child Protection Convention

1. Draft Cooperation Request Recommended Model Form under the 1996 Child Protection Convention

92. The SC supported the use and development of optional forms which are simple and user-friendly. The SC also supported the establishment of a WG in order to undertake further work on the draft Cooperation Request Recommended Model Form for the purpose of requests under Articles 30 to 32 and 34 to 36 of the 1996 Child Protection Convention.

This agenda item was accompanied by Prel. Doc. No 11 of July 2023, which contained the draft Cooperation Request Recommended Model Form under the 1996 Convention. The draft Model Form was prepared following a mandate from the 2017 SC (see C&R No 41 of the 2017 SC).

In introducing the draft Model Form, the PB clarified that the Form excludes request under Article 33. The PB also informed the 2023 SC that 14 States provided valuable comments on the document, which the PB compiled in a separate Prel. Doc. that accompanied Prel. Doc. No 11 (Prel. Doc. No 11A of October 2023 can be found on the 2023 SC specialised secure portal page). It was noted that many of the comments received on the revised Return and Access recommended Model Forms under the 1980 Convention would also have an impact on the draft Cooperation Request Model Form under the 1996 Convention. In the light of the comments on the draft Model Form, the PB suggested that further work was needed and requested permission from the 2023 SC to hold meetings with interested States in order to finalise the Form.

During discussions, delegates generally echoed the written comments received on the Form, expressing concerns that the Model Form is too detailed and long. Delegates suggested simplifying the questions and making them more flexible, to ease the administrative burden on those who will be completing it, namely Central Authority staff and social workers. Delegates suggested establishing a WG to amend and finalise the Model Form.

2. Draft Country Profile for the 1996 Child Protection Convention

> 93. Recalling C&R No 45 of the 2017 SC and the mandate given by CGAP in C&R No 19 of 2018, and considering comments received by States in relation to its structure and content, the SC noted that the PB will continue its work on the draft Country Profile for the 1996 Child Protection Convention in consultation with States. The SC recommended that this work be undertaken with a high degree of priority and be included within the remit of the WG referred to in the C&R No 92 above.

At the 2017 SC, the PB was invited to develop, with a high degree of priority, a draft Country Profile under the 1996 Convention in consultation with HCCH Members and Contracting States (see C&R No 45 of the 2017 SC). At its March 2018 meeting, CGAP mandated the PB to proceed (see C&D No 19 of CGAP 2018).

At the 2023 SC, the PB presented delegates with a draft in Prel. Doc. No 9 of July 2023. In its introductory remarks, the PB highlighted that this was the first time the SC would be discussing the draft Country Profile under the 1996 Convention. It was noted that following the circulation of Prel. Doc. No 9, the PB received comments from eight States on the Country Profile. The majority of the comments received pertained to the length, formatting and structure of the document as well as the use of terminology in some parts of the document to describe particular concepts which may not be known or exist in some jurisdictions or legal systems. Some comments pertained to the French version of the document. Based on the comments received, it was understood that more work needed to be done, particularly in Section 4 of the document which relates to measures of protection under the 1996 Convention.

It was also noted that work on the 1996 draft Country Profile fell within the remit of the e-Country Profile Project and that the PB is committed to ensuring consistency across all Country Profiles that fall within the Project. The PB also asked the SC to take timing into

consideration, highlighting that this work should be prioritised since the e-Country Profile Project is due to end by the end of August 2025. Based on the foregoing, the PB requested permission from the 2023 SC to establish a WG comprised of interested HCCH Members and Contracting States to assist the PB in finalising the draft Country Profile under the 1996 Convention.

There was consensus among delegates that the same WG tasked with finalising the draft Cooperation Request Model Form under the 1996 Convention would assist the PB in finalising the draft Country Profile. At its 2024 meeting, CGAP mandated the PB to proceed with the establishment of the WG for this work (see C&D Nos 23 and 24 of CGAP 2024).

Following the 2023 SC, the PB invited interested HCCH Members and Contracting States to designate experts to join the WG. The meetings to finalise the Model Form and Country Profile [are set to take place] [took place] on 29 May, 13 June, 26 June and 3 July 2024. The finalised Country Profile will be circulated among HCCH Members for their comments before being circulated for approval, if possible, ahead of the 2025 meeting of CGAP .

XXIV. Benefits and use of the 1996 Child Protection Convention in relation to the 1980 Child Abduction Convention

> 94. The SC welcomed the opportunity to discuss and share information with regard to the benefits and use of the 1996 Child Protection Convention in relation to the 1980 Child Abduction Convention.

In introducing this item, the PB informed delegates that, in their responses to question 41 of the Questionnaire on the 1980 Convention (see Prel. Doc. No 7 of June 2023), some States had requested that the 2023 SC discuss the benefits of the 1996 Convention in relation to the 1980 Convention.

The advantages of using the 1996 Convention in conjunction with the 1980 Convention have long been highlighted by the SC, dating back to the 2001 SC (see C&R No 7.1 of the 2001 SC). The 2017 SC reiterated the benefits of the 1996 Convention in the context of cases under the 1980 Convention, including the primary role played by the authorities of the State of habitual residence of the child, rules on jurisdiction (particularly the use of Art. 11 of the 1996 Convention in international child abduction cases), applicable law, recognition and enforcement and co-operation with respect to the organisation and enforcement of rights of custody, access / contact, urgent measures of protection, possible post-return assistance (under Art. 32 of the 1996 Convention) and relocation. The value of the IHNJ was also underlined in this context (see C&R Nos 26-28 of the 2017 SC).

Delegates first discussed the concept of habitual residence under both the 1980 and 1996 Conventions. It was noted that Article 16 of the 1980 Convention and Article 7 of the 1996 Convention work to safeguard the jurisdiction of children's State of habitual residence in cases of alleged wrongful removal or retention. Article 16 of the 1980 Convention prevents the State where the child is present / retained from making decisions on custody, which are matters to be determined by the authorities of the child's State of habitual residence. Article 7 of the 1996 Convention preserves the jurisdiction of the State of habitual residence following an alleged wrongful retention or removal. Delegates highlighted that, in practice, it is important to understand which court has jurisdiction over which matters (determination of habitual residence, whether the removal or retention was wrongful, custody matters etc), and whether a competent authority, in the process of making its decision, can take the decision of another competent authority into consideration. This requires a case-by-case basis approach and direct communication between authorities. Delegates also emphasised the importance

of direct judicial communications in avoiding parallel proceedings in two States on the question of habitual residence, noting that, where practicable, it may be beneficial for joint hearings to take place on the matter.

Delegates also spoke of circumstances where rights of custody are acquired automatically at birth, by operation of the law of a State other than that of the child's habitual residence before the alleged wrongful removal / retention. On this matter, delegates considered that reference to the law of the habitual residence of the child under Article 3 of the 1980 Convention includes consideration of the laws applicable under Article 16 of the 1996 Convention. It was noted that the Explanatory Report on the 1980 Convention makes clear that the choice of the word "law" in Article 3 of the 1980 Convention was purposefully drafted to include both domestic law and the private international law rules of the relevant State. Reference to the law of the habitual residence encompasses the rules contained in various relevant international treaties, including Article 16 of the 1996 Convention.

When it comes to the applicable law rules pertaining to parental responsibility under Articles 16 to 18 of the 1996 Convention, it was noted that consideration of the definition of parental responsibility is often omitted. Delegates recalled Article 1(2) of the 1996 Convention, which provides that the term includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child. Some delegates reported that the concepts of parental responsibility and custody are sometimes conflated, something that can be resolved with further training.

Delegates also discussed the complementarity between the 1980 and 1996 Conventions in the context of access / contact rights. They recalled that Articles 7 and 21 of the 1980 Convention provide detailed responsibilities of Central Authority in securing rights to access / contact and Article 35 of the 1996 Convention which provides substantial flexibility for authorities to organise access / contact. In contrast with the Brussels IIb Regulation, which provides for the recognition and enforcement of decisions only, Article 23 of the 1996 Convention provides for the recognition and enforcement of "measures" (not decisions). It was noted that this provides flexibility, for instance in cases where access / contact rights have been included within a divorce decision. Under the 1996 Convention, it would not be necessary for the entire divorce decision to be recognised in order to give effect to "measures" such as access / contact rights. Some delegates expressed that, in their jurisdictions, rights of access / contact are secured under Article 21 of the 1980 Convention more often than under Article 35 of the 1996 Convention.

Delegates recalled that both the 1980 and 1996 Conventions allow space for mediation and other forms of alternative dispute resolution. Although the 1980 Convention does not expressly mention the term mediation, Article 7(c) provides for the role of Central Authorities in bringing about "an amicable resolution of the issues". Article 31(b) of the 1996 Convention provides for the role of Central Authorities in facilitating "agreed solutions" via mediation, conciliation or similar means. Delegates recalled the useful presentations on the various mediation models in several States earlier on in the 2023 SC and reiterated the usefulness of the *Practitioners' Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children*.

The use of Article 11 of the 1996 Convention in facilitating returns under the 1980 Convention was also discussed, as the return of children can often be an urgent matter. It was noted that Article 11 can be a useful tool to support the return of a child from a State that is not Party to the 1980 Convention.

Delegates acknowledged that mediated agreements in the context of alleged wrongful removals or retentions can result in the return or the non-return of the child and will often involve other matters relating to the child such as custody, access and child support

arrangements. It was recalled that all of these matters are covered in the *Practitioners' Tool*, which is a highly useful tool in preventing wrongful retentions / removals.

XXV. Central Authorities designated under the 1980 Child Abduction and 1996 Child Protection Conventions

> 95. The SC acknowledged that the effective implementation and operation of the 1980 Child Abduction Convention would benefit from an annual or biannual online forum for Central Authorities to exchange best practices and other case management information. Central Authorities are invited to express their interest in participating in the forum, and whether they would like to join a steering group to establish the forum.

During the 2023 SC, Central Authorities had the opportunity to have bilateral meetings at the premises of the PB and facilitated by members of the PB. Participants noted that such meetings were extremely productive, allowing both Central Authorities who do not have regular contact and those Central Authorities who have regular contact to meet in person and discuss practical issues pertaining to their cases.

These bilateral meetings proved so useful that a proposal was made at the plenary of the 2023 SC that an informal forum be established whereby interested Central Authorities could have annual or biannual meetings, to discuss issues they are experiencing, exchange information and good practices and solutions to improve the operation of the 1980 Convention. It was suggested that such annual or bi-annual meetings focus on a specific topic in depth and that a steering group of interested Central Authorities be established to address logistical issues and plan the first meeting. It was noted that the PB, resources permitting, may be able to facilitate such planning by, for example, providing a mailing list.

A proposal along these lines was jointly submitted by two delegations in a Work. Doc. during the plenary of the 2023 SC. There was consensus among delegations to approve the proposal.

XXVI. The Malta Process

> 96. The SC supports the continuation of the Malta Process, including the Working Party on Mediation and a possible Fifth Malta Conference that is envisaged to take place in 2024, subject to available resources.

By way of background, the PB recalled that the Malta Process began 20 years ago with a meeting of a small group of States mainly from Europe and Northern Africa, held in Malta, to raise awareness and exchange on various issues pertaining to the 1980 Convention. At the time, the 1980 Convention was not in force in Northern African States and that, since the beginning of the Malta Process, many States in the region have joined HCCH Conventions.

The PB further recalled that, during the third meeting of the Malta Process in 2009, Canada suggested the creation of the Working Party on Mediation, to discuss mediation in the context of the 1980 Convention. It was agreed that Canada, along with Jordan co-Chair the Working Party.

During discussions, delegates recognised the value that the Working Party has provided through the numerous meetings held since 2009 and through the development of the principles for the establishment of mediation structures. It was noted that the Working Party has allowed Contracting and non-Contracting States with different legal traditions in the field of family law to discuss the use of mediation in cross-border family disputes, where neither the 1980 nor the 1996 Convention apply. It was noted that, due to the COVID-19 pandemic, the Working Party's activities have been seriously disrupted since its last meeting in 2019.

There was consensus among delegations that the Working Party resume its activities. In this regard, Malta's interest to host a meeting towards the end of 2024 was noted. The meeting would provide an opportunity to resume dialogue with and among States whose legal systems are based upon or influenced by Islamic (Shari'a) law, not only in the MENA region but also in the ASEAN region.

XXVII. Permanent Bureau services

97. The SC welcomed the feedback shared by the Contracting Parties on the post-Convention services offered by the PB and its Regional Offices in their responses to the Questionnaire on the practical operation of the Conventions. The SC noted that a number of available HCCH resources (*e.g.*, Guides to Good Practice under the 1980 Child Abduction Convention, Practical Handbook on the 1996 Child Protection Convention) and services offered by the PB help to ensure the effective implementation and operation of the 1980 Child Abduction and 1996 Child Protection Conventions. The SC furthermore acknowledged the high appreciation expressed by States for the post-Convention services provided by the PB through its Regional Offices, noting the substantive impact their support has on the work carried out by Central Authorities and Judges.

During the 2023 SC, the PB noted that it intended to gather feedback and input from HCCH Members and Contracting States on future meetings of the SC. A questionnaire was circulated by the end of 2023, to which a number of Members and Contracting States have already responded. The matter was discussed at the March 2024 Meeting of CGAP. In its Conclusion & Decision No 21, "CGAP invited the PB to host an informal brainstorming session to discuss possible means by which the PB could be assisted with the organisation of the next SC on the 1980 and 1996 Conventions. This session will be organised online, will be open to Members only, and is envisaged to take place before the end of 2024. The PB will report on the outcomes of the brainstorming session at CGAP 2025".

1. INCADAT

98. The SC stressed the value of the International Child Abduction Database (INCADAT) for the effective operation of the 1980 Child Abduction Convention and the need for voluntary contributions to keep it up to date as well as to ensure its maintenance and operation. The SC encouraged Contracting Parties to designate a national INCADAT correspondent.

INCADAT is the only comprehensive, free database on child abduction case law in the world, covering more than 1500 cases and 55 jurisdictions. INCADAT relies solely on voluntary contributions for its maintenance. The importance of, and appreciation for, contributions from the INCADAT correspondents, Central Authorities as well as universities and lawyers who volunteer their time to research case law, was emphasised.

It was also noted with appreciation that, with the help of Argentinian judges, many documents have been translated in Spanish in light of the introduction of Spanish as an official language of the HCCH as of July 2024.

The PB noted that it hoped to expand the database case law but stressed that the lack of dedicated resources poses a major obstacle.

2. Practitioners' Tool

99. The SC welcomed the publication of the *Practitioners' Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children* and encouraged its dissemination.

3. e-Country Profiles project (EU action grant funded project)

100. The SC welcomed the start of the e-Country Profiles project and thanked Australia, the EU, France, Germany, Italy, Sweden, Switzerland, and the European Bailiffs' Foundation for their financial contributions towards the project.

The PB reported on the progress of the e-Country Profile project, funded by an EU action grant. A number of Country Profiles are in varying stages of advancement. It was recalled that the Country Profile under the 1980 Convention has already been reviewed and that the Country Profile under the 2007 Child Support Convention was about to be reviewed. The 2023 SC was informed that a consultation process with HCCH Members would be soon opened regarding the Country Profile under the 2000 Protection of Adults Convention. At the time of writing, this Country Profile has been approved by HCCH Members by written procedure. Finally, it was recalled that the Country Profile under the 1996 Convention is currently in the drafting process, as are the Country Profiles under the 1965 Service and 1970 Evidence Conventions.

The objective to have all aforementioned Country Profiles approved by March 2025 and have their electronic versions implemented by the end of August 2025 was noted.

XXVIII. Other business

1. Immigration issues and criminal proceedings

101. The SC acknowledged the concerns expressed by some States concerning immigration issues and criminal proceedings instituted against the taking parent and recalled C&R Nos 5.2 and 5.3 of the 2001 SC, C&R No 1.8.4 of the 2006 SC, C&R Nos 30 and 31 of the 2011 SC and paragraphs 67 and 68 of the GGP on Article 13(1)(b).

In the context of discussions pertaining to access / contact rights under the 1980 and 1996 Conventions, some delegates raised concerns that there may be difficulty in establishing contact between the child and the left-behind parent(s) where one of the States involved is a non-EU State, due to visa the requirements involved.

It was noted that this topic was discussed on several occasions at previous SC meetings. In this regard, there was consensus to recall the relevant C&Rs adopted on this issue from previous SC meetings.

2. Evidence-based research

102. The SC recalled C&R No 81 of the 2017 SC recognising the value of evidence-based research to strengthen the effective operation of the 1980 Child Abduction Convention. The detrimental impact of abduction on children and family members is well-known. Yet important gaps remain regarding how any voluntary agreements and / or Convention proceedings worked out and whether there were any subsequent legal proceedings and provision of aftercare support. Further research to address these, and other, gaps, would be welcome, especially research of a collaborative or crossjurisdictional nature. The SC acknowledged that this is not part of the work programme of the PB, and that it places no burden on individual States.

Two delegations along with an international non-governmental organisation jointly made a proposal to recall C&R No 81 from the 2017 SC and highlight the importance of evidence-based research to help improve the operation of the 1980 Convention.

There was consensus among delegations to adopt the proposal as drafted.

3. Measures to prevent international child abduction

> 103. The SC endorsed the importance of measures to prevent international child abduction and noted the activities in this field of national or international organisations including, but not limited to, Reunite, The International Child Abduction Center in the Netherlands (Center IKO), ZAnK, Missing Children Europe, and the International Social Service (ISS).

Two delegations along with an international non-governmental organisation jointly made a proposal that the 2023 SC endorse the activities of national and international organisations serving as central points of information, noting that prevention is of the utmost importance in preventing international child abduction.

There was consensus among delegations to adopt the proposal, with the inclusion of references to additional international organisations.

Participants to the Eighth Meeting of the SC on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention (10-17 October 2023), The Hague Academy of International Law (Peace Palace, The Hague)

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