

Council on General Affairs and Policy of the Conference – March 2018

Document	Preliminary Document <input checked="" type="checkbox"/> Information Document <input type="checkbox"/>	No 21 of February 2018
Title	Development of a Guide to Good Practice on the interpretation and application of Article 13(1)(b) of the 1980 Child Abduction Convention – Report by the Chair of the Working Group	
Author	Chair of the Working Group	
Agenda item	Item IV.1.a.ii	
Mandate(s)		
Objective	To seek Council's approval to continue work on the Guide to Good Practice on Article 13(1)(b)	
Action to be taken	For Approval <input checked="" type="checkbox"/> For Decision <input type="checkbox"/> For Information <input type="checkbox"/>	
Annexes	n.a.	
Related documents	n.a.	

Draft Guide to Good Practice on Article 13(1)(b) of the Hague Child Abduction Convention

Report of the Chair to Council 2018

16 February 2018

As Chair of the Working Group, I am very much aware of the time this project has taken and anxious to see it come to a satisfactory conclusion.

In 2012 the Council on General Affairs and Policy of the Hague Conference (Council) made the decision to "establish a Working Group, composed of a broad range of experts including judges, Central Authorities and cross-disciplinary experts, to develop a Guide to Good Practice on the interpretation and application of Article 13(1)(b) of the 1980 Abduction Convention with a component to provide guidance specifically directed to judicial authorities" (Conclusion & Recommendation No 6 of the April 2012 Council meeting).

The increasing reliance on the exceptions to return, including Article 13(1)(b), drove the desire for greater uniformity of interpretation and application. The Explanatory Report clearly states that the 1980 Convention rests on the principle that, following a wrongful removal of a child, the prompt return to its place of habitual residence is in its best interests. This principle gives way, however, in the case of an abduction, where there is a grave risk that ordering return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

Thus the balance between the need to return children wrongfully removed and the need to ensure that the child or children will not be exposed to a grave risk of harm if return is ordered, in the individual case, has become an increasing focus over time. The need to explain and provide guidance for judges, working in different jurisdictions has provided the Working Group and those in the Permanent Bureau tasked with this work, many challenges.

Since the establishment of the Working Group, five meetings have been held (in June 2013, January 2014, November 2014, January 2016, and July 2016), face to face in The Hague (and one in London hosted at the Supreme Court by Baroness Hale) and there has been much intersessional email communication.

Unfortunately personnel changes within the Permanent Bureau over this time have meant that two members of the Permanent Bureau who have had responsibility in succession for the project have left; furthermore, unexpected absences of implicated staff members in the recent past have caused further delays. Obviously all this has impacted on the ability to bring the project to conclusion.

Despite these setbacks, there is reason for optimism for a successful conclusion.

First, the Working group is very committed and cohesive. Unsurprisingly there have been some changes in its composition but those who have joined have brought the same degree of enthusiasm and commitment as their predecessors. We have

learned over time that we can have frank and fearless, but respectful discussions with a view to resolving some of the difficult issues.

Secondly, a comprehensive draft Guide, despite the changeover of personnel in 2017, was able to be disseminated for comment to the Working Group, States Parties, the IHNJ and other interested groups and experts. Not surprisingly many comments were made on the draft Guide about its form and length as well as substance and the issues which had mainly troubled the Working Group (re-) emerged in the consultation process.

The fact that we had a draft Guide for consultation was an important milestone and has enabled us to receive some valuable guidance. There was amongst the responses clearly a concern that much more work on the Guide would be needed.

Prior to the Special Commission meeting on the 1980/1996 Conventions held in 2017, at which the Draft Guide was discussed, the members of the Working Group met and discussed the various submissions that had been received and synthesised the main issues emerging.

The Group felt that while the essence of the Guide was largely welcomed, the Guide was too long and too detailed and that it had too many repetitions. There was concern about the emphasis in Part IV which may need revision as a whole and there were different views about the usefulness of a flowchart.

The Working Group identified the major issues on which guidance from the Special Commission would be useful.

The Special Commission was informed that the Working Group had met in the preceding weekend and discussed the responses and issues they raised. In my capacity as Chair of the Working Group, I advised that the Group acknowledged that much more work on the Guide would be necessary and hoped for endorsement of an ongoing process of re-drafting and consultation and invited comments from experts with that timeframe in mind.

Discussion at the Special Commission provided widespread endorsement for the view of the Working Group that a major revision needed to be undertaken and supported changes suggested by the Working Group.

In the end, the Special Commission concluded and recommended as follows: "The Special Commission welcomes the work of the Working Group and the progress made on the draft Guide to date, and invites the Working Group to continue its work with a view to the finalisation of the Guide. The Special Commission recommends that priority be given to this work" (Conclusion & Recommendation No 54 of the October 2017 SC meeting).

The Working Group felt that while a lot could be done by email and video conferencing, another in-person meeting of the entire Group to discuss the new draft would be required before submitting it to Council in 2019. According to the envisaged time-table, this in-person meeting would take place in late September/October 2018; it would be followed by further consultation and possible revisions with a view to finalisation in early 2019.

A handwritten signature in black ink, appearing to read "Diana Bryant". The signature is fluid and cursive, with a large loop at the top and a checkmark-like flourish at the end.

Diana Bryant, Chair Working Group