

Title	1980 Child Abduction Convention and 1996 Child Protection Convention: Follow up on the 2023 Special Commission meeting
Document	Prel. Doc. No 9 of December 2023
Author	PB
Agenda Item	Item III.1.a
Mandate(s)	C&D No 19 of CGAP 2023; C&D No 15 of CGAP 2022; C&D No 16 of CGAP 2021
Objective	To present possible future work arising from the Eighth Meeting of the Special Commission (SC) on the Practical Operation of the 1980 Child Abduction Convention and 1996 Child Protection Convention (10-17 October 2023) and seek approval from CGAP
Action to be Taken	For Decision <input type="checkbox"/> For Approval <input checked="" type="checkbox"/> For Discussion <input type="checkbox"/> For Action / Completion <input type="checkbox"/> For Information <input type="checkbox"/>
Annexes	N/A
Related Documents	Conclusions & Recommendations adopted by the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention & 1996 Child Protection Convention (C&R of the 2023 SC)

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1980 Child Abduction Convention & 1996 Child Protection Convention: Follow up on the 2023 Special Commission meeting

- 1 The Eighth Meeting of the Special Commission (SC) on the practical operation of the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (1980 Child Abduction 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) met from 10 to 17 October 2023.¹ The SC adopted 103 Conclusions & Recommendations (C&R) which reflect discussions from the meeting.²
- 2 This document focuses on the C&R that require action on the part of HCCH Members, Contracting Parties to the 1980 Child Abduction Convention and / or the 1996 Child Protection Convention and the Permanent Bureau (PB) of the HCCH following the meeting of the SC.

I. Forum on domestic violence and the operation of Article 13(1)(b) of the 1980 Child Abduction Convention

- 3 Following C&R No 26 of the SC, the PB has progressed work on a possible Forum regarding domestic violence and the related application of Article 13(1)(b) of the Child Abduction Convention. The organisation of the Forum, including the preparation of the programme, will be overseen by a small but representative Steering Committee and will bring together relevant parties with expertise and / or experience in return proceedings where domestic violence is raised as a defence to return under Article 13(1)(b). The Forum will provide an informal setting in which participants can engage in a respectful and constructive dialogue regarding the application of Article 13(1)(b). It is envisaged that the Forum will engage participants drawn from interested parties, including, judges, Central Authorities, legal practitioners, academia, non-governmental organisations, advocates for victims of DV, advocates for left-behind parents, and persons with lived experience of international child abduction. Owing to the importance of fostering open and frank exchanges between participants, it is envisaged that the Forum will take place in-person only.
- 4 The proposal that the Forum be held in person only is also based on financial considerations and a reflection of a commitment to keeping the overall costs of the Forum as low as possible. The PB will invite Members and non-Member Contracting Parties to provide an early indication of their interest in participating in the Forum and the financial support they envisage providing for the organisation and holding of the Forum. The possibility of the Forum is contingent upon the receipt of voluntary contributions from Members, non-Member Contracting Parties and other sources. Based on further initial consultations, it is proposed that the Forum will be held from Tuesday 18 June 2024 to Friday 21 June 2024 and take place in Pretoria, South Africa. The PB extends its thanks to South Africa for offering to host the Forum. The PB also wishes to thank the Philippines for its early support and consideration of hosting the Forum but notes the Philippines is unable to do so in 2024 due to a series of other major events taking place in Manila in the first half of 2024.
- 5 Subject to CGAP's approval, the purpose of the Forum is to enable a meaningful dialogue to take place between interested parties regarding cases where Article 13(1)(b) is raised as a defence to return on the basis of domestic violence. Specifically, the Forum will provide an opportunity to give visibility to and to learn from past decisions taken on the application of Article 13(1)(b) in the

¹ The draft annotated agenda of the Eighth SC meeting is available on the HCCH website at www.hcch.net under "Child Abduction" then "Special Commission meetings" and "Eighth Special Commission meeting (October 2023)".

² The C&R of the Eighth SC meeting are available on the HCCH website at www.hcch.net (see path indicated in note 1).

context of domestic violence. The Forum may also inform possible further work of the HCCH on this matter.

II. Revised Request for Return Recommended Model Form and new Request for Access Recommended Model Form under the 1980 Child Abduction Convention

- 6 Following C&R No 50 of the SC, the PB along with interested States will be progressing the final draft of the *Request for Return Recommended Model Form* and the new *Request for Access Recommended Model Form*. It is intended that a revised draft version of the *Request for Return Recommended Model Form* and the new *Request for Access Recommended Model Form* will be submitted to CGAP for approval, if possible at its March 2025 meeting. However, if the Model Forms are finalised well in advance of CGAP 2025, it is proposed that they be submitted to Members for final approval through a written procedure. This would involve the circulation of the Model Forms to Members and, in the absence of any objection within one month, the Model Forms would be taken to be approved.³

III. Working Group on 1996 Child Protection Convention Country Profile and Draft Cooperation Request Recommended Model Form

- 7 Following C&R No 93 of the SC, CGAP is asked to consider reiterating the mandate it gave in C&R No 19 of 2018,⁴ for the development of the 1996 Country Profile, and confirm that this work be completed as a matter of high priority.
- 8 In this regard, following C&R No 93 of the SC, CGAP is asked to consider the establishment of a Working Group (WG) which would work to finalise the 1996 Country Profile.
- 9 Following C&R No 92 of the SC, CGAP is asked to consider that the same WG, subsequent to work on the 1996 Country Profile, progress work on the draft *Cooperation Request Recommended Model Form* for the purpose of requests made under Articles 30 to 32 and 34 to 36 of the 1996 Convention.

IV. WG on Placement and / or Provision of Care of the Child in another Contracting Party (Arts 3(e) and 33 of the 1996 Child Protection Convention)

- 10 Following C&R No 90 of the SC, CGAP is asked to consider establishing a WG with the dual purpose of developing (a) a model form for cooperation under Article 33 and (b) a guide on the operation of the Article.
- 11 In support of this, CGAP is asked to consider that the PB continue collecting information on the operation of Article 33 from Contracting Parties in their jurisdictions in addition to that set out in Preliminary Document (Prel. Doc.) No 20 of September 2023.⁵

³ This method of approval has been proposed for previous HCCH publications. For example, a written procedure was proposed for the draft *Practical Guide on cross-border recognition and enforcement of agreements reached in the course of family matters involving children* (C&D No 10 of CGAP 2020, available on the HCCH website at www.hcch.net under “Governance” then “Council on General Affairs and Policy” then “Archive (2000-2023)”.

⁴ “Conclusions & Recommendations” of CGAP 2018, available on the HCCH website at www.hcch.net under “Governance” then “Council on General Affairs and Policy” and “Archive (2000-2023)”.

⁵ “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 1).

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

- 12 Following C&R No 70 of the SC, CGAP is asked to consider approving the circulation of a questionnaire (annexed to Prel. Doc. No 17 of August 2023)⁶ to Contracting Parties to the 1996 Convention with a view to collecting information from judges and Central Authorities regarding transfer of jurisdiction under Articles 8 and 9 of the 1996 Child Protection Convention, Article 15 of Brussels IIa,⁷ and Articles 12 and 13 of Brussels IIb.⁸
- 13 If CGAP supports this proposal, the PB suggests that it update Prel. Doc. No 17 to reflect Contracting Parties' responses. A final version of Prel. Doc. No 17 would be provided to CGAP to inform its determination of any future work in this area.

VI. Determination of wrongful removal or retention under the 1980 Child Abduction Convention (Arts 8, 14 and 15)

- 14 Following C&R No 46 of the SC, CGAP is asked to consider approving the PB's development of a document for Contracting Parties containing information on the use of Articles 8, 14 and 15. The document would draw on the contents of Prel. Doc. No 14 of August 2023,⁹ and discussions that took place during the meeting. Per C&R No 46 of the SC, once a first draft is completed it would be circulated to Members and Contracting Parties, before submission to CGAP for final approval.

VII. Questionnaire regarding international family relocation

- 15 Following C&R No 54 of the SC, CGAP is asked to consider the PB's development of a questionnaire to HCCH Members, with the purpose of gathering information about States' procedures which facilitate the lawful international relocation of families.

VIII. Malta Process

- 16 Following C&R No 96 of the SC, and the subsequent confirmation received from the Government of Malta that it has agreed to host the Fifth Malta Conference ("Malta V") in collaboration with the HCCH, CGAP is asked to consider the continuation of the Malta Process,¹⁰ including the Working Party on Mediation. Malta V is envisaged to take place in the second half of September 2024, subject to available resources.

IX. Proposal for CGAP

- 17 Based on the foregoing, the PB invites CGAP to consider the following Conclusions & Decisions:
- a. CGAP endorsed the C&R of the Eighth Meeting of the SC on the practical operation of the 1980 Child Abduction Convention and 1996 Child Protection Convention and thanked

⁶ "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 1).

⁷ *Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.*

⁸ *Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction.*

⁹ "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 1).

¹⁰ For more information on the Malta Process, see the HCCH website at www.hcch.net under "Child Abduction" then "Judicial and other conferences".

Ms Victoria Bennett (Australia) and Mr Daniel Trecca (Uruguay) for their leadership and guidance as co-Chairs of the SC;

- b. CGAP endorsed 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 the second half of June 2024;
- c. CGAP endorsed the continuation of the Malta Process, including the Working Party on Mediation and the holding of Malta V in the second half of September 2024;
- d. [CGAP approved the revised *Request for Return Recommended Model Form* and the new *Request for Access Recommended Model Form* under the 1980 Child Abduction Convention and approved their publication on the HCCH website] [CGAP noted that the PB and interested States are finalising the *Request for Return Recommended Model Form* and the *Request for Access Recommended Model Form* under the 1980 Child Abduction Convention, and endorsed the proposal for the final versions of the Forms to be approved through a written procedure];
- e. CGAP mandated the establishment of a WG to lead the completion of the 1996 Country Profile, for the approval of CGAP, as a matter of high priority before the next meeting of CGAP;
- f. CGAP requested that the WG (referred to above in para. 17(e)) subsequently progress work on the draft *Cooperation Request Recommended Model Form* under the 1996 Child Protection Convention for the approval of CGAP in due course;
- g. CGAP requested that the PB continue collecting information from Contracting Parties regarding the application of Article 33 of the 1996 Child Protection Convention in addition to that set out in Prel. Doc. No 20 of September 2023;
- h. CGAP mandated the establishment of a WG on the operation of Article 33 of the 1996 Child Protection Convention to, firstly, develop a Model Form and, subsequently, a Guide on the application of Article 33. The WG will report on its progress to CGAP at its next meeting in 2025;
- i. CGAP endorsed the circulation by the PB of a questionnaire to Contracting Parties on their use of Articles 8 and 9 of the 1996 Child Protection Convention (transfer of jurisdiction), and following this, that an updated version of Prel. Doc. No 17 of August 2023 be provided to CGAP to inform its determination of any future work in this area;
- j. CGAP mandated the development by the PB of a document for Contracting Parties containing information on the use of Articles 8, 14 and 15 of the 1980 Child Abduction Convention (determination of wrongful removal). Once a first draft is completed it would be circulated to Members and Contracting Parties, before submission to CGAP for final approval;
- k. CGAP mandated the development by the PB of a questionnaire to Contracting Parties on the procedures available for the lawful international relocation of families. The PB would report back to CGAP once responses had been received, compiled and analysed.