

Conclusions & Recommendations (C&R)

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. The meeting was attended by 471 delegates, in person and online, representing 66 HCCH Members, 13 non-Member Contracting Parties,¹ one Observer from a non-Member State,² as well as Observers from seven intergovernmental³ and 19 international non-governmental organisations,⁴ as well as by members of the Permanent Bureau (PB).

The SC unanimously reaffirmed the Conclusions & Recommendations (C&R) from its previous Meetings as set out in Prel. Doc. No 1 of October 2022, “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”.

The SC adopted the following C&R:

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.

¹ The following Members of the HCCH and Contracting Parties to either the 1980 Child Abduction Convention or both the 1980 Child Abduction and the 1996 Child Protection Conventions were represented: Albania, Argentina, Australia, Austria, Bahamas, Belgium, Belize, Bolivia, Botswana, Brazil, Burkina Faso, Cabo Verde, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, European Union, Finland, France, Georgia, Germany, Guatemala, Guyana, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Jamaica, Japan, Korea, Latvia, Lithuania, Malta, Mauritius, Mexico, Mongolia, Morocco, Namibia, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Tunisia, Türkiye, United Kingdom, Ukraine, Uruguay, United States of America and Venezuela.

² Lebanon.

³ *Commission Internationale de l'État Civil* (CIEC), Council of Europe, Inter-American Children's Institute, International Organization for Migration (IOM), United Nations Committee on the Rights of the Child (UNCRC), United Nations High Commissioner for Refugees (UNHCR), and United Nations Children's Fund (UNICEF).

⁴ International Association of Family Lawyers (AIJUDEF), *Asociación Americana de Derecho Internacional Privado* (ASADIP), Child Identity Protection (CHIP), European Association of Private International Law (EAPIL), European Group for Private International Law (EGPIL), Inter-American Bar Association (IABA), International Association of Child Law Researchers (IACLaR), International Academy of Family Lawyers (IAFL), International Association of Judges (IAJ), International Bar Association (IBA), Institute of International Law (IIL), International Law Association (ILA), International Law Institute (ILI), International Society of Family Law (ISFL), International Social Service (ISS), Lawyers in Europe on Parental Child Abduction (LEPCA), Missing Children Europe, *Union Internationale des Avocats* (UIA) and US-Mexico Bar Association (USMBA).

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.

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*⁵ as a helpful resource for obtaining information about the use of video-link technology.

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.

⁵ Available on the HCCH website at www.hcch.net under "Evidence Section", then "HCCH Publications".

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.

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)⁶).

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. 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

⁶ Available on the HCCH website at www.hcch.net under “Child Abduction Section”, then “HCCH Publications”.

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”.

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.

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.

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

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”.

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.

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.”

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)).

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.

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

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

40 Further to the discussion on Prel. Doc. No 16,⁷ 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.

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.⁸

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 14.⁹ 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.

⁷ “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”.

⁸ Available on the HCCH website at www.hcch.net under “Child Abduction Section”.

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 7).

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

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*:¹⁰ “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.

X. 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.

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.

¹⁰ Available on the HCCH website at www.hcch.net under “Child Abduction Section”, then “HCCH Publications”.

XI. 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.

XII. 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*¹¹ in facilitating lawful relocation.

XIII. 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.

XIV. 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.

XV. 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.

¹¹ Available on the HCCH website at www.hcch.net under "Child Abduction Section".

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.

XVI. 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.

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.

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.

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 Communications¹² (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.

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,¹³ 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.

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 2023¹⁴ 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.

XVII. Applicable law under the 1996 Child Protection Convention

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.

¹² 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”.

¹³ *Ibid.*

¹⁴ “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).

XVIII. 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).

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.

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 non-recognition 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).

XIX. 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.

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.

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

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.

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.

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 20,¹⁵ 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.

XXI. 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.

¹⁵ “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).

XXII. 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.

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.

XXIII. 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.

XXIV. 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.

XXV. 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.

XXVI. 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.

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.

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.

XXVII. 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).

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 cross-jurisdictional 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.

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)