

Title	1980 Child Abduction / 1996 Child Protection Conventions: Planning for the next Special Commission meeting
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Agenda Item	Item IV.1.a
Mandate(s)	C&D No 19 of CGAP 2020
Objective	To report on the planning and preparatory work for the next meeting of the Special Commission, tentatively planned for 2023
Action to be Taken	For Decision ☐ For Approval ☒ For Discussion ☐ For Action/Completion ☐ For Information ☐
Annexes	N/A
Related Documents	<u>Conclusions and Recommendations of the Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention</u>

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1980 Child Abduction / 1996 Child Protection Conventions: Planning for the next Special Commission meeting

I. Introduction

- 1 Following on Conclusion and Decision No 19 of the Council on General Affairs and Policy (CGAP) of 2020, the Permanent Bureau (PB) has started to plan for the next 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), tentatively scheduled for 2023.
- 2 This Preliminary Document reports on the planning of the PB for the next SC meeting and provides an initial list of possible topics and projects concerning its preparation.

II. Preparatory work

- 3 The PB has initiated a number of projects to prepare for the next meeting of the SC, as outlined below.

A. Circulation of questionnaires

- 4 In preparation for the next meeting of the SC, the PB envisages circulating three questionnaires to Members and Contracting Parties in 2021 and 2022.
- 5 The first questionnaire, planned for circulation in the first half of 2021, is intended to elicit the feedback of Members and Contracting Parties in relation to the list of topics that should be brought to the attention of the SC (see section B below). The PB plans to inform CGAP on the prioritisation of these topics, and other more practical elements in preparation of the next meeting of the SC, at the CGAP meeting in 2022.
- 6 In early 2022, the PB will circulate, as has become custom, two further questionnaires on the practical operation of the Child Abduction and Child Protection Conventions to Members, Contracting Parties to the Conventions, and other interested non-Members. The responses to these questionnaires will inform the agenda of the SC meeting and, depending on CGAP's consideration of the issues relating to INCASTAT (see section C below), may also provide updated statistical information on the use of the two Conventions. Ahead of their planned circulation in 2022, these two questionnaires will be shared with CGAP for its information at its meeting in 2022.

B. Possible topics

- 7 The PB has begun to work on lists of possible topics for the 2023 SC meeting, as outlined below. These lists are not exhaustive and are continuously being updated. They reflect the latest developments and continuing issues that have arisen in relation to the two Conventions. Subject to the views of Members and Contracting Parties, these lists could be included in the preliminary questionnaire on possible topics for the next meeting of the SC, that will be circulated in advance of the meeting. The questionnaire will provide an opportunity for Members and Contracting Parties to indicate their support for, or interest in, these topics, as well as their suggestions for other topics that could become the subject of focused discussion papers or reports.

8 Possible topics in relation to the 1980 Child Abduction Convention include:

1. Interpretation of “habitual residence”: In light of most recent case law, especially in relation to very young children or children constantly on the move,¹ issues arising from the interpretation of the term “habitual residence” in the Child Abduction Convention
2. Grave risk of harm: The impact, utility, and any issues arising three years after its publication, from the use of the Guide to Good Practice (GGP) on Article 13(1)(b) of the Child Abduction Convention²
3. Hearing the child: Current practices regarding the participation of the child in child abduction proceedings,³ both in the context of Article 13(2) and more generally hearing the voice of the child
4. Delays in proceedings: Procedures and good practices that have been implemented by the Contracting Parties to reduce delays⁴
5. Proceedings by remote hearings: The impact of remote hearings and the use of video-link for collecting evidence in abduction proceedings, particularly in light of recent developments related to the COVID-19 pandemic where proceedings were conducted remotely
6. Interaction with other treaty frameworks: The relationship between the Child Abduction Convention and other international treaties, in particular the Optional Protocol to the Convention on the Rights of the Child on a communications procedure,⁵ and the relevant case law.

9 Possible topics in relation to the 1996 Child Protection Convention include:

1. Current practices in family relocation: Current practices relating to family relocation in the context of the Convention, including in connection with the Washington Declaration on International Family Relocation,⁶ as well as other applicable international or regional instruments⁷
2. Transfers of jurisdiction to take measures of protection: Current practices in the implementation and operation of Articles 8 and 9 of the Convention⁸
3. Alternative care and kafala: Developments in relation to alternative care, including in relation to *kafala*.

10 Possible topics in relation to both Conventions include:

1. Rights of access and rights of contact: Current practices in relation to rights of access and rights of contact under both Conventions, in particular where return orders may be delayed

¹ See for example, *Arrêt n° 462 du 12 juin 2020 (19-24.108) - Cour de Cassation - Première chambre civile*, 12 June 2020 (France), INCADAT Reference No: HC/E/FR 1454; *BMC v. BGC* [2020] HKCA 317, 11 May 2020, Court of Appeal (China, Hong Kong, SAR), INCADAT Reference No: HC/E/1486; *Monasky v. Taglieri*, 25 February 2020, Supreme Court of the United States, INCADAT Reference No: HC/E/US 145.

² Guide to Good Practice under the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* – Part VI, Article 13(1)(b), available on the HCCH website at < www.hcch.net > under “Child Abduction” then “HCCH Publications”.

³ See for example, the recently published study by Marilyn Freeman requested by the European Parliament’s Committee on Legal Affairs, “The Child Perspective in the Context of the 1980 Hague Convention”, available at: [https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_IDA\(2020\)659819](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_IDA(2020)659819).

⁴ Following on C&R No 4 of the Seventh Meeting of the SC in 2017.

⁵ Optional Protocol to the Convention on the Rights of the Child on a communications procedure – adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/66/138 of 19 December 2011, entered into force on 14 April 2014.

⁶ The declaration was adopted at the International Judicial Conference on Cross-Border Family Relocation that took place in Washington DC, USA, in March 2010, it is available at: https://assets.hcch.net/upload/decl_washington2010e.pdf.

⁷ This topic is also reflected in Prel. Doc. No 6 of December 2020, “1996 Child Protection Convention: Country Profile and 25th anniversary”, drawn up for the attention of the 2021 CGAP meeting, available on the HCCH website < www.hcch.net > under “Governance” then “Council on General Affairs and Policy”.

⁸ Following on C&R No 51 of the Seventh Meeting of the SC in 2017, the PB is planning to prepare a report for the attention of the next SC meeting.

or difficult to enforce due to travel restrictions. This topic was raised more generally at the 2017 SC meeting, where the SC invited the PB to assess possible HCCH tools to clarify and address existing variations and discrepancies in the interpretation of Article 21 of the Child Abduction Convention⁹

2. Guardian *ad litem*: Current practices, including the advantages and disadvantages, of the appointment of a guardian *ad litem* in Child Abduction and Child Protection Convention cases
3. Direct Judicial Communications / International Hague Network of Judges (IHNJ): Following on the next IHNJ meeting, which tentatively will take place before the next meeting of the SC, an assessment on the implementation of the IHNJ Secure Platform and the new initiatives relating to online meetings of members of the IHNJ
4. Mediation and alternative dispute resolution: Current practices and developments in relation to the use of mediation and other forms of dispute resolution in cases falling within the scope of these two Conventions, including in the context of the Malta Process and its Working Party on Mediation.

C. Statistical analysis – INCASTAT

- 11 Another project related to the preparations for the next SC meeting is the assessment of INCASTAT, as reported in Prel. Doc. No 7.¹⁰ The PB invites CGAP to refer to this document for more detailed information. Any decision made concerning INCASTAT will have an impact on the statistical study that will be prepared for the next SC meeting.

D. 1996 Child Protection Convention: Country Profile

- 12 The PB further draws Prel. Doc. No 6¹¹ to the attention of CGAP. The PB invites CGAP to approve the suggested workplan related to the development of a Country Profile for the 1996 Child Protection Convention with a view, as emphasised by previous SCs, to implementing it in an electronic environment. The PB invites Members and Contracting Parties to provide suggestions as to what information they consider should be included in the Country Profile.

III. Proposal to CGAP

- 13 The PB invites CGAP to approve the suggested workplan in relation to the preparations for the next meeting of the SC on the Child Abduction and Child Protection Conventions. This suggested workplan is submitted in parallel to those submitted in Prel. Doc. No 7 on INCASTAT, and in Prel. Doc. No 6 related to the Country Profile for the 1996 Child Protection Convention.

⁹ See C&R No 19 of the Seventh Meeting of the SC in 2017.

¹⁰ “Status and use of INCASTAT – a critical assessment”, Prel. Doc. No 7 of December 2020 drawn up for the attention of the 2021 CGAP meeting, available on the HCCH website < www.hcch.net > (see path indicated in note 7).

¹¹ “1996 Child Protection Convention: Country Profile and 25th anniversary”, Prel. Doc. No 6 of December 2020 drawn up for the attention of the 2021 CGAP meeting (see path indicated in note 7).