



# **International Children Conventions under review - Conclusions from the March 2024 Hague Conference on Private International Law**

With nearly 100 member states across the world, the Hague Conference is perhaps the most established and well-known organisation working in the area of private international law. It is this organisation that administers two particular conventions in relation to international children law, namely:

- The 1980 Hague Convention on the Civil Aspects of International Child Abduction, which regulates the return of children taken between member states; and
- The 1996 Hague Convention on Parental Responsibility and Protection of Children, which regulates civil protective measures and the recognition of certain children orders between member states.



The Hague's Council on General Affairs and Policy has this week convened to discuss and scrutinise the organisation's projects and work for the year ahead. The Conclusions & Decisions help reflect the shape of the Hague Council's work going forward, with particular efforts being made in relation to the grave risk of harm/Article 13b defence under the 1980 Hague Convention, and in relation to parentage.

## **Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention**

Article 13(1)(b) provides for one of the limited exceptions to the principle of prompt return of a wrongfully removed or retained child under the Convention in cases where the return would expose the child to a '*grave risk of harm*'.

The Article recognises three types of '*grave risk*':

- a grave risk that the return would expose the child to physical harm;
- a grave risk that the return would expose the child to psychological harm; or
- a grave risk that the return would otherwise place the child in an intolerable situation.

From an English perspective, it is often said that Article 13b is the most commonly-pleaded defence, and the least likely to succeed.

The Council has further set up a forum to discuss Article 13b within the Hague abduction context. This follows the publication of the Guide to Good Practice on this topic in 2020 and is a continuation of its efforts to promote the consistent application of the law in this area across all 102 signatory states to this Convention.

The Guide to Good Practice in relation to Article 13(b) is available online [here](#), and provides a reflection as to the high threshold for the use of Article 13b, examples of assertions, and overarching principles. The upcoming forum is a welcome event to see how this Guide is being deployed across member states. For English lawyers, whilst the Guide is not binding on judges *per se*, it is becoming increasingly used in international children cases. A number of High Court and Court of Appeal decisions have repeatedly pointed to the Guide in the determination of abduction applications. Alongside our own case law, successive judgments have endorsed the Guide's



suggestion that the court should first consider whether the assertions are of such a nature and of sufficient detail and substance, and if they could constitute a grave risk, before determining if possible whether the grave risk exception is established by reference to all the circumstances of the case.

Other topics of note contained in HCCH's Conclusions and Decisions Report were:

**Parentage/Surrogacy:** The Working Group on Private International Law matters related to legal parentage provided a report and invited the Permanent Bureau to convene two additional meetings in the next year to report on developing provisions for a draft instrument or treaty.

**Abduction & Child Protection Conventions:** The Council further endorsed the Conclusions & Recommendations that came from the 8th Special Commission meeting in October 2023. For the year ahead, we can expect to see a Model Request for Return form; a Model Access form; the 1996 Country Profile; a Model form for Cooperation Request under the 1996 Convention; a Model form on the application of Article 33 of the 1996 Convention; a questionnaire to Contracting Parties to the 1996 on their use of Articles 8 and 9; a document for Contracting Parties to the 1980 with information on the use of Articles 8, 14, and 15; and, a questionnaire for Contracting Parties to the 1980 and 1996 Conventions on procedures for the lawful international relocation of families.

**Article 13(b) of the Abduction Convention and Domestic Violence:** The Council welcomed a forum on domestic violence and Article 13(b) of the 1980, to take place in Sandton, South Africa from June 18-21, 2024.

**Adoption Convention:** The Council confirmed welcomed the publication of a Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption, and invited the Bureau to convene at least 2 further meetings of the Working Group on the Financial Aspects of Intercountry Adoption before 2025.

**Evidence and Service Conventions:** The Council welcomed preparations for a Special Commission Meeting in July 2024 and also approved of the establishment of two Working Groups to review and refine updates to the Handbooks and Country Profiles for the Service and Evidence Conventions.

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