

The Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention – October 2017

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Title	Delays in the operation of the 1980 Child Abduction Convention – a compilation of existing resources	
Author	Permanent Bureau	
Agenda item	No 3	
Mandate(s)	States' responses to Preliminary Document No 2, "Questionnaire on the Practical Operation of the <i>Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction</i> "	
Objective	The PB has prepared, as a resource for States, a compilation of existing Hague Conference materials relevant to delays from a variety of sources, including 1980 Convention provisions, Special Commission Conclusions and Recommendations, and Guides to Good Practice.	
Action to be taken	For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input checked="" type="checkbox"/>	
Annexes		
Related documents		

The prompt return of abducted children is essential to the effective operation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction (hereinafter “the Convention”). However, delays in return continue in many Contracting States. To assist States in addressing these challenges, this paper consolidates existing HCCH materials relevant to delays from a variety of sources, including Convention provisions, Special Commission conclusions and recommendations,¹ statistical studies, Guides to Good Practice, General Principles on Direct Judicial Communications, and State procedures.² The paper is organised in this manner:

- Introduction
- Best interests of the child
- State practice
- Central Authorities
- Courts
- Enforcement

This paper does not address delays in the context of Article 13(1)b) of the Convention (the grave risk exception), as those issues are examined in the Guide to Good Practice on Article 13(1)b) that is being developed by the Hague Conference.

I. INTRODUCTION

	Text	Citation to the source
Swift procedures are essential	Part I of the Guide to Good Practice under the 1980 Child Abduction Convention emphasises that “[e]xpeditious procedures are essential at all stages of the Convention process” and that “[f]ailure to act promptly undermines the Convention”.	Hague Conference on Private International Law, <i>Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part I – Central Authority Practice</i> [hereinafter “GGP-I”], Bristol, Family Law (Jordan Publishing Limited), 2003, Chapters 1.5.1 and 1.5.2, respectively.
Delays in the return process are a serious concern	GGP-I explains that delays are “[t]he most contentious issue surrounding implementation of the Convention”. Meetings of the Special Commission on the practical operation of the Convention have repeatedly focused on delays and have made numerous recommendations on how to improve procedures.	GGP-I, Chapter 1.5.2

¹ Also included are references to conclusions and recommendations from the 2nd Inter-American Meeting of Central Authorities and International Hague Network Judges on International Child Abduction, held in Panama, 29-31 March 2017.

² Throughout this paper, text is bolded for emphasis.

	Text	Citation to the source
Convention requirements	-“Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence . . .”	Preamble, third clause
	-“The objects of the present Convention are – a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State . . .”	Article 1
	With respect to Article 1, the Explanatory Report on the Convention notes that prompt return achieves the restoration of the status quo, a prime objective of the Convention.	See E. Pérez-Vera, “Explanatory Report on the 1980 Hague Convention on the Civil Aspects of International Child Abduction”, in <i>Actes et documents de la Quatorzième session (1980)</i> , Tome III, <i>Child Abduction</i> , The Hague, SDU 1982, pp. 426-473, available on the Hague Conference website at < www.hcch.net > under “Child Abduction”, para. 16.
	-“Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available. ”	Article 2
	-“Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children . . .”	Article 7
	-“If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.”	Article 9
	-“The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children. If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. ”	Article 11
	With respect to Article 11, the Explanatory Report states that the duty in the first sentence has a double aspect: “firstly, the use of the most speedy procedures known to their legal system; secondly, that applications are, so	Pérez-Vera Report, paragraphs 104 and 105

	Text	Citation to the source
	far as possible, to be granted priority treatment." The Explanatory Report goes on to say that the importance of the second sentence "cannot be measured in terms of the requirements of the obligations imposed by it, but by the very fact that it draws the attention of the competent authorities to the decisive nature of the time factor in such situations and that it determines the maximum period of time within which a decision on this matter should be taken."	

II. BEST INTERESTS OF THE CHILD

	Text	Citation to the source
	<p>GGP-I underscores that the best interests of the child require expeditious action in the return process:³</p> <p>"The Preamble to the Convention states that the interests of children are paramount, and that the Convention's purpose is to protect them from the harmful effects of abduction. Experience has shown that speedy, prompt or expeditious action under the Hague Convention is a critical factor in protecting children's interests. An expedited process will:</p> <ul style="list-style-type: none"> - minimise disruption or dislocation to the child taken from its familiar environment; - minimise harm to the child caused by separation from the other parent; - reduce the further disruption for the child which may result where a return order is made after a settled period abroad; - prevent or limit any advantage to the abductor gained by the passage of time. <p>Without derogating from the importance of speed as a key operating principle, a Central Authority or its intermediary needs to exercise some discretion in resolving any conflict between taking action promptly or speedily, and allowing time to negotiate an amicable resolution of the matter or a voluntary return."</p>	GGP-I, Chapter 1.5.3.

³ See also Conclusions and Recommendations of the 2nd Inter-American Meeting of Central Authorities and International Hague Network Judges on International Child Abduction, Panama (29-31 March 2017) [hereinafter "C&R of the 2nd Inter-American Meeting"], available on the Hague Conference website at <www.hcch.net> under "Child Abduction Section" then "Judicial and other Seminars on the International Protection of Children" and "Latin America and the Caribbean", C&R No 15: "Participants recognised that the Hague Convention is consistent with the principle of the best interest of the child as provided under the UN Convention on the Rights of the Child. It complements the latter by providing effective means to combat international child abduction and protect victims of this wrongful conduct."

III. STATE PRACTICE

The Questionnaire circulated to States in advance of the 2011/2012 Special Commission on the practical operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention⁴ asked for information about the procedural rules in place with respect to return proceedings under the Convention in the context of delays.⁵ The **factors that States identified as causing delays** include, *e.g.*:⁶

- Lack of appropriate procedures
- Incomplete requests submitted by the requesting State
- Congested dockets in the courts
- Availability of legal counsel
- Complexity of the case
- The judge's knowledge of Convention procedures
- Requests made by the parties, including for postponement
- Need for the appointment of experts
- Need to obtain evidence
- Waiting for materials and information from the requesting State
- Interpretation issues
- Appeals

With regard to means of **addressing those concerns**, States noted:

- Many States have special procedural rules in place (whether through law, regulation, executive decree, etc.) that apply to return proceedings under the Convention.
- Such rules generally provide for the expedited handling of return cases.
- The rules in some States incorporate the six-week deadline for reaching a decision that is set forth in Article 11 of the Convention.
- Some States reported that decisions are generally made within the six-week period.

⁴ See "Questionnaire concerning the practical operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parent Responsibility and Measures for the Protection of Children*", Prel. Doc. No 1 of November 2010 for the attention of the Special Commission of June 2011 on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention.

⁵ *Id.*, Question 4.2.

⁶ States' responses are available on the Hague Conference website at <www.hcch.net> under "Child Abduction Section", then "Special Commission meetings", then "Sixth Special Commission meeting", then "Prel. Doc. No 1 of November 2010".

IV. CENTRAL AUTHORITIES

Special Commission Conclusions and Recommendations

	Text	Citation to the source
General	"Children who have been wrongfully removed or retained abroad are to be returned promptly, according to the Convention. Central Authorities should acknowledge receipt of an application immediately and endeavour to provide follow-up information rapidly . Practical arrangements for the safe return of children should be under contemplation from the commencement of the application."	Conclusions and Recommendations of the Special Commission on the practical operation of the 1980 Child Abduction Convention (18-21 January 1993), C&R No 4 [hereinafter, "C&R of the 1993 SC"], available on the Hague Conference website at www.hcch.net under "Child Abduction Section" then "Special Commission meetings".
Resources and powers	"Moreover, the Special Commission encourages States, whether contemplating becoming Parties to the Convention or already Parties, to organize their legal and procedural structures in such a way as to ensure the effective operation of the Convention and to give their Central Authorities adequate powers to play a dynamic role , as well as the qualified personnel and resources , including modern means of communication, needed in order expeditiously to handle requests for return of children and for access."	Conclusions and Recommendations of the Special Commission on the practical operation of the 1980 Child Abduction Convention (23-26 October 1989), C&R No IV [hereinafter, "C&R of the 1989 SC"], available on the Hague Conference website at www.hcch.net under "Child Abduction Section" then "Special Commission meetings".
	"The Central Authorities designated by the States Parties play a key role in making the Convention function. They should act dynamically and should be provided with the staff and other resources needed in order to carry out their functions effectively."	C&R No 3 of the 1993 SC.
	"The Central Authorities designated by the Contracting States play a key role in making the Convention function. They should be given a mandate which is sufficiently broad , and the qualified personnel and the resources , including modern means of communication, necessary to act dynamically and carry out their functions effectively. Central Authorities should have a regular staff, able to develop expertise in the operation of the Convention."	Conclusions and Recommendations of the Special Commission on the practical operation of the 1980 Child Abduction Convention (22-28 March 2001), C&R No 1.1 [hereinafter, "C&R of the 2001 SC"], available on the Hague

	Text	Citation to the source
		Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings".
	"Contracting States that have not already done so are asked to provide their Central Authorities with sufficient powers to request, where needed for the purpose of locating the child, information from other governmental agencies and authorities , including the police and, subject to law, to communicate such information to the requesting Central Authority."	Conclusions and Recommendations of the Special Commission on the practical operation of the 1980 Child Abduction Convention (1-10 June 2011), C&R No 5 [hereinafter, "C&R of the 2011 SC"], available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings".
Co-operation and communications	"Central Authorities should acknowledge receipt of an application immediately and endeavour to provide follow-up information rapidly. Central Authorities should reply promptly to communications from other Central Authorities."	C&R No 1.3 of the 2001 SC.
	"Central Authorities should, as far as possible, use modern rapid means of communication in order to expedite proceedings , bearing in mind the requirements of confidentiality."	C&R No 1.4 of the 2001 SC.
Applications for return⁷	"The requesting Central Authority should ensure that each application is accompanied by a sufficient statement of the legal and factual basis on which the application rests , in particular concerning the matters of the habitual residence of the child, rights of custody and the exercise of those rights, as well as detailed information on location of the child . Central Authorities are reminded of the model form for the Request for Return recommended by the Fourteenth Session of the Hague Conference (citations omitted)."	C&R No 1.6 of the 2001 SC.
	"The problem of legal concepts being mistranslated or misunderstood may be eased if the requesting Central Authority provides a summary of the relevant law concerning rights of custody . This summary would be in addition to a translation or copy of the relevant law."	Conclusions and Recommendations of the Special Commission on the practical operation of the 1980 Child Abduction Convention (30 October-9 November 2006), C&R

⁷ See also C&R No 3(a) of the 2nd Inter-American Meeting: "When the location of the child is provided by the left-behind parent, it is not necessary to confirm or report on this location before initiating return proceedings;" and C&R No 3(b): "Unless requested by the left-behind parent or the requesting Central Authority, it is not necessary to report on the well-being of the child before initiating return proceedings".

	Text	Citation to the source
		No 1.1.1 [hereinafter, "C&R of the 2006 SC"], available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings".
	"In exercising their functions with regard to the transmission or acceptance of applications, Central Authorities should be aware of the fact that evaluation of certain factual and legal issues (for example, relating to habitual residence or the existence of custody rights) is a matter for the court or other authority deciding upon the return application. "	C&R No 1.1.2 of the 2006 SC.
	"The requesting Central Authority should ensure that the application is complete . In addition to the essential supporting documents, it is recommended that any other complementary information that may facilitate the assessment and resolution of the case accompany the application."	C&R No 12 of the 2011 SC.
	"The Special Commission re-emphasises that – (a) in exercising their functions with regard to the acceptance of applications, Central Authorities should respect the fact that evaluation of factual and legal issues (such as habitual residence, the existence of rights of custody, or allegations of domestic violence) is, in general, a matter for the court or other competent authority deciding upon the return application; "	C&R No 13(a) of the 2011 SC.
Securing voluntary return	"Contracting States should encourage voluntary return where possible. It is proposed that Central Authorities should as a matter of practice seek to achieve voluntary return , as intended by Article 7 c) of the Convention, where possible and appropriate by instructing to this end legal agents involved, whether state attorneys or private practitioners, or by referral of parties to a specialist organisation providing an appropriate mediation service. The role played by the courts in this regard is also recognised."	C&R No 1.10 of the 2001 SC, reaffirmed by C&R No 1.3.1 of the 2006 SC.
	"Measures employed to assist in securing the voluntary return of the child or to bring about an amicable resolution of the issues should not result in any undue delay in return proceedings. "	C&R No 1.11 of the 2001 SC, reaffirmed in C&R No 1.3.1 of the 2006 SC. See also C&R No 27 of the 2nd Inter-American Meeting: "Participants highly recommended the search for amicable solutions in child abduction cases. Many jurisdictions cautioned that where authorities are considering using

	Text	Citation to the source
		alternative dispute resolution tools, such as mediation or conciliation, they should be implemented in a way that is consistent with the 1980 Child Abduction Convention, avoiding generating unnecessary delays in the return procedure."

Good Practices

	Text	Citation to the source
Resources and powers	GGP-1 sets forth recommended good practices for Central Authorities that are relevant to avoiding delays. "Central Authorities should be given a mandate which is sufficiently broad, and the qualified personnel and the resources, including modern means of communication, necessary to act dynamically and carry out their functions effectively. Central Authorities should have a regular staff, able to develop expertise in the operation of the Convention. The maintenance of a regular staff may be problematic in Central Authorities with a very small number of cases. The difficulties in developing a workable system in such circumstances are recognised. One way to minimise the problem, especially if there is no continuity of personnel, is to ensure that the office develops a procedure manual for the Convention, which can be followed by anyone who is required to fulfil the Central Authority's obligations."	GGP-I, Chapter 1.1.
Expeditious procedures	"Speed is of the essence in Hague abduction matters. Expeditious procedure is a key operating principle for any person or body involved in the implementation of the Convention. This is clear from the objects of the Convention as set out in Article 1, to secure the prompt return of children. It is also clear from the general direction in Article 2 to use the most expeditious procedures possible, and in Article 11 to act expeditiously in proceedings for the return of children. To encourage expeditious procedures, Article 23 of the Convention removes any requirement for legalisation of documents or similar formalities."	GGP-I, Chapter 1.5.1.
The need to act promptly at all stages	"The most contentious issue surrounding implementation of the Convention concerns delay, in processing applications, resolving matters in court, or enforcing return orders. The need for speed at all stages of the process cannot be over-emphasised. The four meetings of the Special	GGP-I, Chapter 1.5.2.

	Text	Citation to the source
	Commission to date have all reiterated and endorsed conclusions and recommendations to the effect that Central Authorities must have adequate powers and resources to expeditiously handle requests for return of children or for access. Many Contracting States have expressed concerns about delays and excessively complex procedures used by Central Authorities in processing cases, in responding to communications, and in referring cases to court. An essential step that minimises these obstacles, and achieves speedy or prompt action, is to develop clear and effective administrative and legal procedures for handling Convention applications. This should be done at an early stage of implementation."	
Scope of Central Authority functions	"Issues such as rights of custody, habitual residence, whether the child is settled in the country of refuge, or is at grave risk of harm, are ultimately issues for determination by a court or tribunal, not the Central Authority."	GGP-I, Chapter 4.5. See also C&R No 7 of the 2nd Inter-American Meeting, which recalls this provision of Chapter 4.5.

Responsibilities of the requesting Central Authority

Chapter 3 of GGP-I addresses the procedures to be followed by the requesting Central Authority in processing outgoing applications. Particularly relevant to the need for speed are the following:

- Obtaining information about procedures in the requested State (including whether further proceedings are necessary for the enforcement of a return order, and the appeals process if the court refuses to order a return).
- Checking that the application is complete and in an acceptable form for the requested State.
- Checking that the application satisfies Convention requirements.
- Providing information about the relevant laws of the requesting State.
- Ensuring that all essential supporting documents are included.
- Providing a translation of the application and all essential documents.
- Ensuring the application is sent to the correct address.
- Sending the application by priority mail, and also by fax or email.
- Where the application is urgent, informing the requested Central Authority of the reasons.
- If the requested Central Authority requires additional information, providing it as soon as possible.
- Advising the requested Central Authority if there are difficulties in meeting deadlines.
- Being reasonable about requests for follow-up information from the requested Central Authority.
- Monitoring progress of the application.
- Providing an Article 15 declaration or determination, as far as practicable.
- Co-operating with the requested Central Authority to facilitate a safe return.

Responsibilities of the Requested Central Authority

Chapter 4 of GGP-I discusses the procedures to be followed by the requested Central Authority with respect to incoming applications. Those of particular relevance in ensuring the prompt return of the child include:

- Observing internal or external time frames.
- Taking preliminary actions on the basis of advance copies of an application sent by fax or email.
- Registering the receipt of an application.
- Promptly acknowledging receipt of an application.
- Checking that the application appears to come within the Convention.
- Advising the requesting Central Authority if additional information or documents are needed.
- For urgent applications, making every effort to expedite matters more quickly than usual.
- Providing reasons for refusing to accept an application.
- Assisting in locating the child.
- If a child is no longer in the territory of the requested Contracting State, promptly transmitting the application to another Central Authority where the child is thought to be.
- Taking all appropriate measures to obtain the voluntary return of a child.
- Taking all appropriate measures to provide or facilitate the provision of legal aid or advice for the applicant.
- Promptly providing follow-up information about an application.
- Taking all appropriate measures to prevent further harm to a child or prejudice to interested parties by taking or causing to be taken provisional measures.
- Initiating or facilitating the institution of legal or administrative proceedings to obtain the return of the child.
- Minimising requirements for applicants to attend court hearings in the requested State.
- Monitoring progress of the application.
- Informing the requesting Central Authority as soon as a court decision is known.
- Taking any appropriate steps to ensure that the requesting Central Authority or the applicant is aware of his/her rights of appeal, as well as any deadlines or conditions attached to the appeal.
- Taking all appropriate measures to provide necessary administrative arrangements to secure the safe return of the child.
- Facilitating assistance with enforcement of a return order.

V. COURTS

Special Commission Conclusions and Recommendations

	Text	Citation to the source
General	<p>“Delay in legal proceedings is a major cause of difficulties in the operation of the Convention. All possible efforts should be made to expedite such proceedings. Courts in a number of countries normally decide on requests for return of a child on the basis only of the application and any documents or statements in writing submitted by the parties, without taking oral testimony or requiring the presence of the parties in person. This can serve to expedite the disposition of the case. The decision to return the child is not a decision on the merits of custody.”</p>	C&R No 7 of the 1993 SC.
	<p>“The Special Commission underscores the obligation (Article 11) of Contracting States to process return applications expeditiously, and that this obligation extends also to appeal procedures.”</p>	C&R No 3.3 of the 2001 SC; reaffirmed by C&R No 1.4.1 of the 2006 SC. See also C&R No 9 of the 2nd Inter-American Meeting: “Judges recognised and highlighted that by joining the 1980 Child Abduction Convention, States are bound to take all appropriate measures to secure the implementation of the objects of the Convention. ...”
Timetables and case management	<p>“The Special Commission calls upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications.”</p>	C&R No 3.4 of the 2001 SC; reaffirmed by C&R No 1.4.1 of the 2006 SC. See also C&R No 10 of the 2nd Inter-American Meeting: “Judges considered that there was a need to review their internal procedures to assess whether they allow for decisions to be taken within the timeframe of the 1980 Child Abduction Convention (cf. Article 11), and if not, to adjust the relevant procedures accordingly. ...”; C&R No 12: “When reviewing existing procedures or preparing new

	Text	Citation to the source
		procedures, judges also recommended giving special attention to appeals, which are often the source of considerable delays. In this regard, some jurisdictions reported procedures establishing very strict timeframes for appeals and limiting or eliminating appeals to Supreme Courts. ..."; and C&R No 19: "... Judges underlined that in urgent proceedings, such as those requiring protection measures, the most rapid means of communication should be used."
	"The Special Commission calls for firm management by judges , both at trial and appellate levels, of the progress of return proceedings."	C&R No 3.5 of the 2001 SC; reaffirmed by C&R No 1.4.1 of the 2006 SC. See also C&R No 14 of the 2nd Inter-American Meeting: "Judges agreed that, apart from the procedural frameworks existing in their respective jurisdictions, judges should be proactive in child abduction cases. Examples of this proactive approach include prioritizing such cases when setting hearings, being restrictive with regards to the admission of evidence, setting clear guidelines with parties and monitoring the enforcement of their orders and, in general, developing efficient case management strategies. ..."
Concentration of jurisdiction / training	"The Special Commission calls upon Contracting States to bear in mind the considerable advantages to be gained by a concentration of jurisdiction to deal with Hague Convention cases within a limited number of courts."	C&R No 3.1 of the 2001 SC. See also C&R No 13 of the 2nd Inter-American Meeting: "Judges also recommended considering the concentration of jurisdiction in child abduction cases, and

	Text	Citation to the source
		highlighted the importance of continued training and awareness-raising on the operation of the 1980 Child Abduction Convention. ..."
	"The progress already made in certain Contracting States, as well as the consideration now being given to this matter in others, is welcomed. Where a concentration of jurisdiction is not possible, it is particularly important that judges concerned in proceedings be offered appropriate training or briefing. "	C&R No 3.2 of the 2001 SC.
Evidence	"Rules and practices concerning the taking and admission of evidence, including the evidence of experts, should be applied in return proceedings with regard to the necessity for speed and the importance of limiting the enquiry to the matters in dispute which are directly relevant to the issue of return.	C&R No 3.7 of the 2001 SC. See also C&R No 23 of the 2 nd Inter-American Meeting: "During the discussion, reference was made to the use of Article 14, which allows competent authorities, with a view to expedite proceedings, to take notice directly of the law and / or judicial and administrative decisions of the requesting State."
Direct judicial communications	"Contracting States are encouraged to consider identifying a judge or judges or other person or authorities able to facilitate at the international level communications between judges or between a judge and another authority."	C&R No 5.5 of the 2001 SC. See also C&R No 22 of the 2 nd Inter-American Meeting: "Judges recognised that the best way to obtain information and co-ordinate the provision of protection measures is through judicial co-operation using direct judicial communications. ..."
	"Contracting States should actively encourage international judicial co-operation. This takes the form of attendance of judges at judicial conference by exchanging ideas/communications with foreign judges or by explaining the possibilities of direct communication on specific cases. ..."	C&R No 5.6 of the 2001 SC.
	"The Special Commission reaffirms Recommendations No 5.5 and 5.6 of the 2001 meeting of the Special Commission, and underlines that direct judicial communications should respect the laws and procedures of the jurisdictions involved. ..."	C&R No 1.6.3 of the 2006 SC.

	Text	Citation to the source
	" ... States that have not yet designated Hague Network judges are strongly encouraged to do so. "	C&R No 64 of the 2011 SC.
	"The Special Commission also welcomes the actions taken by States and regional organizations nationally and regionally regarding the establishment of judicial networks and the promotion of judicial communications."	C&R No 65 of the 2011 SC.
	"The Special Commission emphasises the importance of direct judicial communications in international child protection and international child abduction cases. "	C&R No 66 of the 2011 SC.

Good Practices

	Text	Citation to the source
Expeditious procedures	<p>"To the extent consistent with considerations of due process, Article 2 of the Convention requires the use by Contracting States of the most expeditious procedures available to achieve the objects of the Convention. In particular, judicial and administrative authorities are under the obligation to process return applications expeditiously.</p> <p>Expeditious procedures should be viewed as procedures which are both fast and efficient. Almost all aspects of implementation (<i>e.g.</i> the investment of adequate resources and powers in Central Authorities, the allocation of jurisdiction among courts/administrative authorities, the procedures to be followed both at first instance and on appeal, and the ready availability of appropriate advice, assistance and representation) may have a bearing on the speed with which applications are processed."</p>	See Hague Conference on Private International Law, <i>Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part II – Implementing Measures</i> [hereinafter "GGP-II"], Chapter 1.5, Bristol, Family Law (Jordan Publishing Limited), 2003.
Concentration of jurisdiction	<p>"In a growing number of Contracting Parties to the 1980 Convention, States have concentrated jurisdiction to consider Hague applications in a limited number of courts and administrative bodies within their State. The Fourth Special Commission agreed to a Recommendation calling upon Contracting States to bear in mind the considerable advantages to be gained by a concentration of jurisdiction to deal with Hague Convention cases within a limited number of courts. The principal advantages to be gained in Convention cases by such a concentration of jurisdiction are:</p> <ul style="list-style-type: none"> - an accumulation of experience among the judges concerned; and, as a result, - the development of mutual confidence between judges and authorities in different legal systems; - the creation of a high level of interdisciplinary understanding of Convention objectives, in particular the distinction from custody proceedings; 	GGP-II, Chapter 5.1.

	Text	Citation to the source
	<ul style="list-style-type: none"> - mitigation against delay; and - greater consistency of practice by judges and lawyers. <p>The Conclusions from the Fourth Special Commission, as well as Conclusions from a number of judicial seminars stress the importance and desirability of concentrating jurisdiction in Hague return cases. The Fourth Special Commission called upon Contracting States to bear in mind the considerable advantages to be gained by a concentration of jurisdiction to deal with Hague return cases within a limited number of courts. The positive experience of several countries that have concentrated jurisdiction over Hague return cases to a limited number of courts and judges has been widely recognised. The further progress in this direction already made in several Contracting States is welcomed; so too is the consideration being given to this matter in other States. In several countries other special arrangements exist. For example, jurisdiction may be limited to the superior court level or to a specialised family court or to otherwise specified courts or judges."</p>	
Training and education	<p>"In States where domestic legal systems may not allow for a concentration of jurisdiction, it is particularly important that judges concerned in Hague proceedings be offered appropriate training or education. Judicial training and education are effective tools to assist judges in understanding the Convention and consequently to render decisions more in accordance with the aims of the Convention. Training and education may also highlight the important available resources and tools, such as the Pérez-Vera Report and the International Child Abduction Database, which may provide aid in consistency of interpretation. Without such training, coherent and consistent interpretation and application of the Convention may be at risk."</p>	GGP-II, Chapter 5.2.
Disposal of applications	<p>"Contracting States are under the obligation to process return applications expeditiously. This obligation extends also to appeal procedures. A pivotal factor in the successful application of the Convention is the speedy disposal of applications. The last sentence of Article 2 of the Convention specifies one of the particular implementation measures envisaged for securing the objects of the Convention, namely the use by Contracting States of the most expeditious procedures available to achieve the objects of the Convention. Implementing legislation may include new provisions to facilitate the expeditious handling by courts of Hague cases. Several States' statutes, regulations, Rules of Court or Codes of Civil Procedure contain provisions which give the courts powers to give a Hague return application priority, to take any necessary provisional measures and set out expedited procedures. In some States, provision is made for all Convention cases to go specifically to designated courts in order to ensure</p>	GGP-II, Chapter 6.3.

	Text	Citation to the source
	that cases are heard by judges who have sufficient knowledge of the Convention's provisions and to expedite proceedings."	
Case management	"Prompt decision making under the Convention serves the best interests of children. To ensure that return applications are dealt with expeditiously at first instance and on appeal , some practical or legal measures for strict case management may be necessary. These may include, where constitutionally permitted, requiring or calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications, requiring firm management by judges, both at trial and appellate levels, of the progress of return proceedings and giving Hague return cases preferential listing in court."	GGP-II, Chapter 6.4.
Rules of evidence	"Rules and practices concerning the taking and admission of evidence, including the evidence of experts, should be applied in return proceedings with regard to the necessity for speed and the importance of limiting the enquiry to the matters in dispute which are directly relevant to the issue of return."	GGP-II, Chapter 6.5.
Foreign law	<p>"Judicial notice of law and decisions Under the Convention, the removal or retention of a child is to be considered wrongful where it is in breach of custody rights attributed under the law of the State in which the child was habitually resident immediately before the removal or retention. As a result, the competent authorities of requested States will have to take that law into consideration when deciding whether a child should be returned. The purpose of Article 14 is to simplify proof of that law or the recognition of foreign decisions, thereby enabling the competent authorities to act expeditiously in proceedings for the return of children. Implementing legislation does sometimes reflect Article 14 by providing that courts may take judicial notice of foreign law, or of judicial or administrative decisions, directly without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which could otherwise be applicable. Legislation may also allow for decisions and determinations of authorities of Contracting States to be admissible as evidence.</p> <p>Declarations of wrongful removal: Article 15 provides for the possibility of requesting from the authorities of the child's habitual residence a declaration on the wrongful nature of the removal. The purpose of Article 15 is to help the requested judicial or administrative authorities reach a decision in those cases where there is uncertainty whether the removal or retention of a child was wrongful under the law of the State of the child's habitual residence. In some domestic legal systems it is not possible to make "declaratory judgments" unless explicitly provided for in implementing</p>	GGP-II, Chapter 6.5.1.

	Text	Citation to the source
	<p>legislation. Certain countries have therefore provided specifically in their implementing legislation that their courts may make such declaratory orders. Some common law countries will permit an ex parte application for an Article 15 declaration to be made. It may well defeat the purpose of the Convention if a court could only make such a declaration after a defended hearing."</p>	
Documentary evidence	<p>"The Convention relaxes certain evidentiary rules as a way of speeding up return proceedings. Article 30 of the Convention is intended to facilitate the introduction of documentary evidence, including affidavits. Under Article 30, any application submitted to the Central Authority or petition submitted to the court, along with any documents or information appended thereto, are admissible in court. States are encouraged to ensure, where necessary through implementing legislation, that such documentary evidence can be given due weight under the national evidence rules. Hague return cases lend themselves to determination by summary proceedings. A full trial, consisting of an evidentiary hearing, will normally not be necessary or desirable. Legislation may provide that affidavit evidence, transcripts of oral evidence and legal argument from the requesting State are admissible as evidence of fact. Rules adopted in several jurisdictions provide for expedited hearings to this effect. In a number of countries, Hague return proceedings are now conducted primarily on the basis of written submissions and evidence. In order to expedite proceedings, rules have been developed in some countries (often by the judiciary) to define and limit the circumstances in which oral evidence may be admitted. Oral testimony does not necessarily cause undue delay under strict judicial control. Much may depend on the issue. For example, in some jurisdictions oral evidence is more likely to be admitted if there is conflicting documentary evidence by the parties which cannot be resolved without cross-examination or oral evidence. If that is the case, as a general matter, both parties should be given a chance to be heard."</p>	GGP-II, Chapter 6.5.2.
Personal appearance of the applicant	<p>"Due to the international character of Convention cases and the geographical distances involved, the legal requirement in some countries of the applicant's personal appearance at the proceedings in the requested State may cause delay in the proceedings and add excessive expenditure for the applicant. A requirement for the applicant's personal appearance at the proceedings may, in some cases, have the effect of rendering the Convention remedy unavailable. In many instances it may not be necessary for both parents to be physically present at a return hearing, but rather the left-behind parent could be represented to assure full consideration of relevant issues. The use of affidavit evidence for overseas applicants may facilitate</p>	GGP-II, Chapter 6.5.3.

	Text	Citation to the source
	the proceedings. In such cases it is important that no adverse inference is to arise because the overseas applicant is unavailable for cross-examination on his or her affidavit evidence. To this end, some jurisdictions have court rules which allow for cross-examination of the applicant in his/her own jurisdiction with transmission of the transcript to the requested State for use at the hearing of the application for return."	
Fast-track appeals	"Experience has shown that the appeal process in Hague cases can cause long delays before a final determination of the matter. This may be so even though a first instance decision has been made promptly. The Convention requirement of expeditious proceedings applies equally to the appeal process. There is a difference between systems which provide for timely, reasonable appellate review and those where courts of appeal can be readily misused by abductors to delay returns. The latter, obviously, is inconsistent with the objectives of the Convention. Provisions to encourage speed within the appeals process may include limiting the time for appeal from an adverse decision, requiring permission for appeal and specifying the court or limiting the number of courts to which appeal can be made. Contracting States should also ensure that implementing measures are in place for the immediate enforcement of a return order, even though an appeal may be sought, unless a stay has been granted. This may discourage abuse of the appeal process to delay the return of the child."	GGP-II, Chapter 6.6
Direct judicial communications	"The second communication function consists of direct judicial communications with regard to specific cases, the objective of such communications being to address any lack of information that the competent judge has about the situation and legal implications in the State of the habitual residence of the child. In this context, members of the Network may be involved in facilitating arrangements for the prompt and safe return of the child , including the establishment of urgent and / or provisional measures of protection and the provision of information about custody or access issues or possible measures for addressing domestic violence or abuse allegations. These communications will often result in considerable time savings and better use of available resources, all in the best interests of the child. "	See Hague Conference on Private International Law, <i>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</i> [hereinafter "Direct Judicial Communications"], Introduction, 2013.
	"Efforts should be made within States to promote the appropriate use of direct judicial communications in the international protection of children, to increase awareness of the existence and role of Network Judges and to	Direct Judicial Communications, Introduction

	Text	Citation to the source
	ensure, where appropriate, that necessary support and resources are provided to enable them to function effectively.”	
	“The Hague Network Judge will encourage members of the judiciary in his / her jurisdiction to engage, where appropriate, in direct judicial communications.”	Direct Judicial Communications, Principles for General Judicial Communications, Section 5.1.
	“The Hague Network Judge may provide, or facilitate the provision of, responses to focussed enquiries from foreign judges concerning legislation and Conventions on international child protection and their operation in his / her jurisdiction.”	Direct Judicial Communications, Principles for General Judicial Communications, Section 5.2.
	<p>“Matters that may be the subject of direct judicial communications include, for example:</p> <ul style="list-style-type: none"> a) scheduling the case in the foreign jurisdiction: i to make interim orders, <i>e.g.</i>, support, measure of protection; ii to ensure the availability of expedited hearings; b) establishing whether protective measures are available for the child or other parent in the State to which the child would be returned and, in an appropriate case, ensuring the available protective measures are in place in that State before a return is ordered; c) ascertaining whether the foreign court can accept and enforce undertakings offered by the parties in the initiating jurisdiction; d) ascertaining whether the foreign court can issue a mirror order (<i>i.e.</i>, same order in both jurisdictions); e) confirming whether orders were made by the foreign court; f) verifying whether findings about domestic violence were made by the foreign court; g) verifying whether a transfer of jurisdiction is appropriate.” 	Direct Judicial Communications, Principles for Direct Judicial Communications in specific cases including commonly accepted safeguards , Preface
	“In considering whether the use of direct judicial communications is appropriate, the judge should have regard to speed, efficiency and cost-effectiveness. ”	Direct Judicial Communications, Principles for Direct Judicial Communications in specific cases including commonly accepted safeguards, Section 7.1
	“Judges should consider the benefit of direct judicial communications and when in the procedure it should occur.”	Direct Judicial Communications, Principles for Direct Judicial Communications in specific cases including commonly accepted safeguards, Section 7.2
	“The timing of the communication is a matter for the judge initiating the communication.”	Direct Judicial Communications, Principles for Direct Judicial

	Text	Citation to the source
		Communications in specific cases including commonly accepted safeguards, Section 7.3
	"The initial communication should ordinarily take place between two Hague Network Judges in order to ascertain the identity of the judge seized in the other jurisdiction."	Direct Judicial Communications, Principles for Direct Judicial Communications in specific cases including commonly accepted safeguards, Section 7.4
	<p>"When making contact with a judge in another jurisdiction, the initial communication should normally be in writing ... and should in particular identify:</p> <ul style="list-style-type: none"> a) the name and contact details of the initiating judge; b) the nature of the case (with due regard to confidentiality concerns); c) the issue on which communication is sought; d) whether the parties before the judge initiating the communication have consented to this communication taking place; e) when the communication may occur (with due regard to time differences); f) any specific questions which the judge initiating the communication would like answered; g) any other pertinent matters." 	Direct Judicial Communications, Principles for Direct Judicial Communications in specific cases including commonly accepted safeguards, Section 7.5
	"The time and place for communications between the courts should be to the satisfaction of both courts. Personnel other than judges in each court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation of counsel unless otherwise ordered by either of the courts."	Direct Judicial Communications, Principles for Direct Judicial Communications in specific cases including commonly accepted safeguards, Section 7.6

VI. ENFORCEMENT

Special Commission Conclusions and Recommendations

	Text	Citation to the source
General	"Delays in enforcement of return orders, or their non-enforcement, in certain Contracting States are matters of serious concern. The Special Commission calls upon Contracting States to enforce return orders promptly and effectively. "	C&R No 3.9 of the 2001 SC. See also C&R No 24 of the 2 nd Inter-American Meeting: "Participants recognized that, consistent with the <i>Guide to Good Practice</i> ,

	Text	Citation to the source
		<i>Part IV – Enforcement</i> , the inclusion of specific provisions in return orders regarding the manner and timing of the actual return of the child to the State of habitual residence increases compliance with the order and reduces delay.”; and C&R No 25: “Participants underlined that the effective enforcement of return orders requires that these orders be as detailed as possible, specifying, for example, with whom, where, when and how the child should be returned. ...”
	“It should be made possible for courts, when making return orders, to include provisions to ensure that the order leads to the prompt and effective return of the child. ”	C&R No 3.10 of the 2001 SC.
Review	“Efforts should be made by Central Authorities, or by other competent authorities, to track the outcome of return orders and to determine in each case whether enforcement is delayed or not achieved. ”	C&R No 3.11 of the 2001 SC.

Good Practices⁸

	Text	Citation to the source
	<p>“Delays in enforcement of return orders, or their non-enforcement, in certain Contracting States are matters of serious concern. Difficulties often arise when an order for return is made, but the order makes no, or inadequate, provision for putting the return into practical effect.</p> <p>It is recommended that State Parties ensure that there are simple and effective mechanisms to enforce orders for the return of children within their domestic systems or by providing for such within the implementing legislation. To this end, it is important to recognise the necessity that return orders be enforced, i.e., that return actually be effected not just ordered.</p>	GGP-II, Chapter 6.7.

⁸ For more detailed information regarding good practices with respect to the enforcement of judicial decisions to return abducted children, see Permanent Bureau of the Hague Conference on Private International Law, *Guide to Good Practice under the Hague Conference of 25 October 1980 on the Civil Aspects of International Child Abduction, Part IV – Enforcement*, Bristol, Family Law (Jordan Publishing Limited), 2010.

	Text	Citation to the source
	<p>Several jurisdictions have put in place procedures to ensure that return orders are enforced promptly and effectively once they are final and absolute (i.e. there is no further appeal allowed or the time limit for the appeal is exhausted) or if the court has ordered the immediate execution of the order.</p> <p>In practice, the courts in several jurisdictions, upon ordering a return, set out in detail the manner in which the return is to take effect. In preparing judges to carry out their role States should underline the importance for the trial judge to draw up clear orders which deal with the practicalities of return (e.g., specifying the date and time of return). To this end, some courts applying the Convention look to undertakings made by the party seeking return in order to minimise the possible impact on children.</p> <p>Courts may also put into place arrangements to ensure that the abductor is unable to disappear with the child between the date of the order and the date of return. Other punitive measures to discourage avoidance of a return order include penalties for contempt of court, fine or imprisonment. The role of the State Attorney/Public Prosecutor may also be expanded to provide for co-ordination with other organisations or to authorise the commencement of proceedings to locate or obtain the return of a child. Contracting States may be able to use other resources such as law enforcement or private agencies to facilitate return.</p> <p>In other jurisdictions, enforcement is possible through the threat of a coercive enforcement penalty, an order for coercive detention or the authorisation for the use of force. In several jurisdictions the court may order the issue of a warrant for the apprehension or detention of the child.</p> <p>In legal systems where the applicant is required to take steps to have a decision enforced and/or to have specific enforcement measures ordered, it is recommended to ensure that the applicant is made aware of these additional requirements. States are encouraged to avoid delay with regard to enforcement of return orders."</p>	